

No. 12881

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United States  
Court of Appeals  
for the Ninth Circuit.

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BANK OF AMERICA NATIONAL TRUST AND  
SAVINGS ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of Record

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Petitions to Review Decisions of the Tax Court  
of the United States.

FILED

MAY 11 1951

PAUL A. O'BRIEN

CLERK



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Court of Appeals  
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Petitions to Review Decisions of the Tax Court  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## **APPEARANCES**

**For Petitioner:**

**GEORGE H. KOSTER, ESQ.**

**For Respondent:**

**EARL C. CROUTER, ESQ.**



The Tax Court of the United States  
Docket No. 8993

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION, a National  
Banking Association,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DOCKET ENTRIES

1945

Aug. 21—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 21—Copy of petition served on General Counsel.

Oct. 9—Answer filed by General Counsel.

Oct. 9—Request for hearing in San Francisco filed by General Counsel.

Oct. 11—Notice issued placing proceeding on San Francisco calendar. Service of answer and request made.

1946

May 27—Motion for leave to file amended petition and amended petition lodged, filed by taxpayer. 5/28/46 Granted.

1946

May 29—Copy of motion and amended petition served on General Counsel.

June 19—Answer to amended petition filed by General Counsel. Served 6/20/46.

1949

Sept. 20—Motion to place on San Francisco, Calif., calendar Nov. 7, 1949, filed by taxpayer. 9/21/49 Granted.

Sept. 22—Hearing set Nov. 7, 1949, at San Francisco, California.

Nov. 7—Hearing had before Judge Harron on merits. Respondent's motion for leave to file amendment to answer—granted. Petitioner allowed usual time to answer if desired. Respondent's motion to file amendment to answer—granted and amendment to answer filed. Copies served. Stipulation of facts filed at hearing. Briefs due Dec. 28, 1949. Replies due Jan. 26, 1950.

Dec. 7—Transcript of hearing 11/7/49 filed.

Dec. 28—Brief filed by taxpayer. Copy served, 12/29/49.

Dec. 28—Brief filed by General Counsel. Copy served.

1950

Jan. 6—Reply brief filed by taxpayer. 1/17/50.  
Copy served.

Jan. 25—Reply brief filed by General Counsel.  
Copy served.

Oct. 20—Findings of fact and opinion rendered,  
Judge Harron. Decision will be entered  
under rule 50. Copy served.

Nov. 22—Respondent's computation filed.

Nov. 27—Hearing set December 20, 1950, on Re-  
spondent's computation.

Dec. 20—Hearing had before Judge Kern on set-  
tlement. Referred to Judge Harron.

Dec. 22—Decision entered. Judge Harron. Div. 13.

1951

Feb. 9—Petition for review by U. S. Court of Ap-  
peals, Ninth Circuit, with assignments of  
error filed by taxpayer.

Feb. 26—Notice of filing petition for review with  
affidavit of service of petition for review  
attached thereon, filed.

Feb. 26—Statement of points with affidavit of serv-  
ice attached thereon, filed by taxpayer.

Feb. 26—Designation of contents of record filed by  
taxpayer with affidavit of service attached  
thereon.

[Title of Tax Court and Cause.]

## MOTION FOR LEAVE TO FILE AMENDED PETITION

Comes now the taxpayer, Bank of America National Trust and Savings Association by its counsel, George H. Koster, and moves this honorable court to grant the said taxpayer leave to file the amended petition attached hereto.

This motion is based upon the following grounds:

1. Since the original petition was filed herein, additional franchise taxes based upon the petitioner's income for the year 1942 have been assessed and collected from petitioner. In the original petition, petitioner alleged that it was informed and believed that additional franchise taxes for said year would be assessed and assigned as error, the failure to allow deduction for said additional franchise taxes. The amended petition sets forth the exact amount of the additional franchise taxes which exact amount exceeds the amount alleged in the original petition. As the petitioner keeps its books and records on an accrual basis, it is believed that said additional franchise taxes are a proper deduction of the year for which the assessment is made rather than the year in which the tax is paid.

2. Since the original petition herein was filed, it has been determined that petitioner understated the deduction to which it was entitled for depreciation of certain bank buildings. The amended peti-

tion sets forth the facts with regard to said depreciation and assigns as error the failure to allow said additional depreciation.

Respectfully submitted,

/s/ GEORGE H. KOSTER,  
Counsel for Petitioner.

Received and Filed T.C.U.S. May 27, 1946.

Granted May 28, 1946. Bolan B. Turner, Judge.

Served May 29, 1946.

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The Tax Court of the United States  
Docket No. 8993

BANK OF AMERICA NATIONAL TRUST AND  
SAVINGS ASSOCIATION, a National Bank-  
ing Association,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

#### AMENDED PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IRA:90-D HVH, dated June 5, 1945, and as a basis of its proceeding alleges as follows:

1. The petitioner is a national banking association with principal office at 300 Montgomery Street,

San Francisco, California. The return for the period here involved was filed with the collector for the First District of California, San Francisco, California.

2. The notice of deficiency (a copy of which is attached to the original petition herein as Exhibit A\* is hereby referred to and by this reference, made a part hereof) was mailed to petitioner on June 5, 1945.

3. The taxes in controversy are income taxes for the calendar year 1943 in the amount of \$1,075,-697.43, consisting of a proposed deficiency of \$915,-040.93 and a claimed overpayment of \$160,656.50, and declared value-excess profits taxes for the calendar year 1943 in the amount of \$163,465.77, consisting of a proposed deficiency of \$161,650.70 and a claimed overpayment of \$1,815.07.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in disallowing a loss in the amount of \$464,811.68 sustained by the petitioner during the year 1943 upon the sale of certain bank premises.

(b) The Commissioner erred in disallowing as a deduction for 1943 California franchise taxes in the amount of \$1,801,764.30 based upon the net income of the petitioner for the calendar year 1943.

(c) The Commissioner erred in failing to allow

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\*See Page 16 of this Printed Record.

an additional deduction in the amount of \$50,000 for additional California franchise taxes based upon net income of petitioner for the calendar year 1943.

(d) Commissioner erred in failing to allow an additional deduction in the amount of \$204,790.58 for additional franchise taxes based upon the net income of petitioner for the calendar year 1942.

(e) The Commissioner erred in reducing the allowance for depreciation of fixtures owned by petitioner and used in its business by the amount of \$189,394.10.

(f) The Commissioner erred in reducing the allowance for depreciation of furniture owned by petitioner and used in its business by the amount of \$91,948.68.

(g) The Commissioner erred in failing to increase the deduction for depreciation of banking premises by the amount of \$55,810.78.

(h) The Commissioner erred in determining a deficiency in income taxes and declared value-excess profits taxes against the petitioner for the year 1943 in any amount.

(i) The Commissioner erred in failing to determine that petitioner overpaid its income tax for the year 1943 by the amount of \$160,656.50 and over-paid its declared value-excess profits tax for the year 1943 by the amount of \$1,815.07.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner is a national banking association with its principal place of business in the City and County of San Francisco, California.

(b) Petitioner duly filed its income and declared value-excess profits tax return for the calendar year 1943 on March 14, 1944, with the Collector of Internal Revenue for the First District of California at San Francisco, California. Said return disclosed a liability for income taxes in the amount of \$5,126,122.84 and a liability for declared value-excess profits taxes in the amount of \$1,815.07. Said taxes were duly paid to the Collector of Internal Revenue for the First District of California at San Francisco, California, as follows:

\$1,281,984.48 on March 14, 1944;

\$1,281,984.48 on June 12, 1944;

\$1,281,984.48 on September 11, 1944;

\$1,281,984.47 on December 13, 1944.

(c) Petitioner keeps its books and records and makes its income tax returns on the accrual basis.

(d) During the year 1943 petitioner sold several parcels of real property used by it as banking premises to Capital Company, a California corporation, for a total consideration of \$2,853,459.39. The total cost to the petitioner of all of said properties was \$4,232,195.06. The total adjusted basis for gain or loss on the sale or exchange of said properties of petitioner was \$3,315,130.02. Petitioner incurred and paid expenses in connection with the sale of said properties in the total amount of \$3,141.05. Petitioner sustained losses upon the sales of said properties during the year 1943 in the total amount of \$464,811.68. Said losses in said total

amount of \$464,811.68 were allowable deductions for income tax purposes. Respondent erroneously disallowed the entire amount of said loss in determining petitioner's net income for the year 1943.

(e) On December 31, 1943, petitioner became liable to the State of California for franchise taxes in the amount of \$1,801,764.30 based upon its net income for the calendar year 1943. On December 31, 1943, said franchise taxes accrued under the law of California and became a lien upon the real property of petitioner which lien had the same force and priority as a judgment lien. Said tax accrued as a liability of petitioner during the year 1943 and was allowable as a deduction for the year 1943 for income tax purposes. Petitioner deducted said franchise taxes in its income and declared value excess profits tax return for the year 1943. Respondent erroneously disallowed the entire amount of said deduction for franchise taxes.

(f) Petitioner is informed and believes and upon the basis of such information and belief alleges that additional franchise taxes based upon its net income for the year 1943 will be assessed and collected from petitioner in an amount not less than \$50,000. Said additional franchise taxes will constitute an accrued liability of petitioner for the year 1943, and are a deductible expense for the year 1943 for income tax purposes. In recomputing petitioners net income for the year 1943, respondent allowed no deduction for said additional franchise taxes.

(g) During the year 1946, additional California

Bank and Corporation franchise taxes based upon and measured by petitioner's net income for the year 1942, were assessed and collected from petitioner in the amount of \$270,156.07. Said additional franchise taxes constituted an accrued liability of petitioner for the year 1943 and were a taxable expense of the petitioner for said year 1943 for income tax purposes. In recomputing petitioner's net income for the year 1943, respondent allowed as a deduction only \$65,365.49 of said additional franchise taxes based upon petitioner's net income for the year 1942 and erroneously failed and refused to allow as a deduction the remaining \$204,-790.58 of said additional franchise taxes.

(h) During the year 1943, petitioner owned furniture and fixtures which it used in its business and which had been acquired at various times at a total cost of \$6,577,354.57 for the furniture and \$9,726,795.64 for fixtures. A reasonable allowance for the depreciation of said furniture and fixtures for the year 1943 under the provisions of Section 23(1) of the Internal Revenue Code was not less than \$312,949.41 for said furniture and \$513,721.94 for said fixtures. Petitioner deducted said amounts in its income and declared value-excess profits tax return for the year 1943. Respondent reduced said deductions by amounts of \$91,948.68 for the furniture and \$189,394.10 for the fixtures and allowed revised deductions for depreciation in the amount of \$221,000.73 for the furniture and \$324,327.84 for the fixtures. The adjustments made by respondent of the deductions taken by petitioner for depre-

ciation of its furniture and fixtures were erroneous and the amounts allowed by the respondent do not constitute a reasonable allowance for depreciation within the provisions of Section 23(1) of the Internal Revenue Code.

(i) During the year 1943, petitioner owned certain banking premises including the buildings thereon which buildings had a cost to petitioner of \$23,-005,523.26. Under the provisions of Section 23(1) of the Internal Revenue Code, petitioner was entitled to a reasonable allowance for the depreciation of said buildings. A reasonable allowance for the depreciation of said buildings during the year 1943 was not less than \$328,508.45. In its income and declared value-excess profits tax return for the year 1943, petitioner inadvertently understated the deduction to which it was entitled for depreciation of said banking premises and deducted on said return the sum of \$272,697.67. Petitioner inadvertently understated the deduction for depreciation on banking premises by the amount of \$55,810.78. In recomputing petitioner's net income for the year 1943, respondent allowed additional depreciation on banking premises in the amount of \$5,810.78 and erroneously failed and refused to allow as a deduction the remaining \$50,000 which petitioner was entitled to deduct as depreciation on banking premises.

(j) As the result of the failure and refusal of the respondent to allow the deductions set forth herein, respondent overstated petitioner's net income for the year 1943 by the amount of \$2,852,-

709.34 and erroneously determined that petitioner was liable for deficiencies in income taxes and declared value-excess profits taxes for the year 1943.

(k) In its income and declared value-excess profits tax return for the year 1943, petitioner inadvertently overstated its net income by the amount of \$403,443.41 and overpaid its declared value-excess profits taxes by the amount of \$1,815.07 and overpaid its income taxes by the amount of \$160,656.50. No part of said taxes overpaid by petitioner have been refunded to petitioner.

Wherefore petitioner prays that this Court may hear the proceeding and determine that there is no deficiency of income taxes or declared value-excess profits taxes due from petitioner for the year 1943; that petitioner overpaid its income taxes and declared value-excess profits taxes for the year 1943; that petitioner is entitled to the refund of the taxes overpaid by it for the year 1943; and for such other and further relief as may be proper.

/s/ GEORGE H. KOSTER,  
Counsel for Petitioner.

State of California,  
City and County of San Francisco—ss.

R. G. Smith, being duly sworn, says that he is the Executive Vice President of the Bank of America National Trust and Savings Association, the petitioner herein, and is duly authorized to verify the foregoing petition; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and

that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ R. G. SMITH.

Subscribed and sworn to before me this 23rd day of May, 1946.

[Seal] /s/ JOHN H. BURNS,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission expires April 12, 1949.

Lodged T. C. U. S. May 27, 1946.

Filed T. C. U. S. May 28, 1946.

Served May 29, 1946.

## EXHIBIT A

To the original petition.

Treasury Department  
Internal Revenue Service  
San Francisco 5, California

June 5, 1945

Office of Internal Revenue Agent in Charge  
San Francisco Division  
74 New Montgomery Street

IRA:90-D

HVH

Bank of America National Trust and Savings  
Association

300 Montgomery Street  
San Francisco, California

Gentlemen:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1943, discloses a deficiency of \$915,040.93 and that the determination of your declared value excess-profits tax liability for the year mentioned discloses a deficiency of \$161,650.70 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may

file a petition with the Tax Court of the United States for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, 74 New Montgomery Street, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,  
Commissioner.

By /s/ F. M. HARLESS,  
Internal Revenue Agent in  
Charge.

Enclosures:

Statement

Form of waiver.

## Statement

San Francisco  
IRA :90-D  
HVH

Bank of America National Trust and  
Savings Association  
300 Montgomery Street  
San Francisco, California

## Tax Liability for the Taxable Year Ended December 31, 1943

	Liability	Assessed	Deficiency
Income Tax .....	\$6,041,163.77	\$5,126,122.84	\$915,040.93
Declared Value excess- profits Tax .....	163,465.77	1,815.07	161,650.70

This determination of your income tax liability and declared value excess-profits tax liability has been made upon the basis of information on file in this office.

In making this determination of your income tax liability and declared value excess-profits tax liability, it is noted that you requested the issuance of a deficiency notice for the year 1943, without the privilege of first filing a protest.

## Adjustments to Net Income

Net income for declared value excess-profits tax computation as dis- closed by return .....	\$17,544,414.55
Unallowable deductions and additional income:	
(a) Loss on the sale of assets other than capital assets .....	\$ 449,055.24
(b) Social security tax .....	11,558.53
(c) California franchise tax .....	1,736,398.81
(d) Depreciation .....	267,299.86
(e) Rent .....	14,438.31
(f) Dividends .....	15.18      2,478,765.93
<hr/>	
Total .....	<hr/> \$20,023,180.48
Nontaxable income and additional deductions:	
(g) Capital stock tax .....	29,500.00
<hr/>	
Net income for declared value excess-profits tax computation as adjusted .....	\$19,993,680.48

## Explanation of Adjustments

(a) Net loss claimed on the sale of assets other than capital assets is decreased \$449,055.24 as follows:

(1) Loss on the sale of bank premises disallowed.....\$464,811.68  
(2) Loss on the sale of Torrence property increased 15,756.44

Net decrease in loss.....\$449,055.24

(1) Net loss claimed on the sale of assets other than capital assets includes losses of \$464,811.68 on the sale of certain banking premises to the Capital Company. The Capital Company held legal title to these properties for a period of one month and received rent from you for such period of ownership. The properties were then sold by the Capital Company to the Merchants National Realty Corporation, your wholly owned subsidiary.

The Transamerica Corporation controlled all of the outstanding shares of the Capital Company. Approximately 22 per cent of your stock was owned by the Transamerica Corporation group.

Under date of August 1, 1936, you entered into an agreement with the Merchants National Realty Corporation whereby you leased from the Merchants National Realty Corporation certain banking premises. The rental was to be an amount equal to the total of all expenses and charges of the lessor allowable to said lessor as deductions from gross income for federal income tax purposes, less an amount equal to the total income of the lessor derived from all other sources. The result of this agreement is that all operations of the Merchants National Realty Corporation were merged with your operations, leaving no income of the Merchants National Realty Corporation subject to income tax.

It is held that no deductible loss resulted from the sale of banking premises to the Capital Company. Your taxable income is, therefore, increased \$464,811.68.

(2) During 1941 you acquired the Torrence property from the Merchants National Realty Corporation, your wholly owned subsidiary. A loss of \$47,307.34 on this transaction as claimed by your subsidiary in its 1941 return was disallowed. During 1943 you sold the commercial portion of the property and claimed a loss of approximately \$8,500.00 on the sale. The loss claimed on the portion sold during 1943 is increased \$15,756.44 due to the adjustment of the cost basis to take into consideration the disallowance of the loss claimed for 1941.

(b) Social security tax of \$11,558.53 paid during 1943 for the years 1940, 1941 and 1942 does not constitute an allowable deduction from 1943 income and is, therefore, disallowed.

(c) The deduction for California franchise tax is decreased \$1,736,-398.81 as follows:

	Claimed	Allowed	(Increase) Decrease
(1) Tax based on 1943 net income....	\$1,801,764.30	None	\$1,801,764.30
(2) Tax based on 1942 net income....	1,319,388.51	\$1,384,754.00	(65,365.49)
Totals .....	\$3,121,152.81	\$1,384,754.00	\$1,736,398.81

(1) California franchise tax claimed in the amount of \$1,801,764.30, representing franchise tax for the year 1944, is disallowed, since it is held that this tax accrues as of the first day of the year 1944 and not on the last day of the year 1943.

Under the provisions of the California Bank and Corporation Franchise Act the amount of the franchise tax is based upon the income of the next preceding "income year." As the result of amendments enacted by the California Legislature, effective May 7, 1943, the date on which the franchise tax became a lien on the property of the corporation was changed from the first day of the "taxable year" to the last day of the "income year."

Notwithstanding the aforementioned amendment to the California statute, it is held that for federal income tax purposes, the franchise tax accrues as of the first day of the "taxable year" in which the franchise is exercised, since it is the exercise of such franchise that fixes the amount of the tax and the corporation's liability to pay it.

(2) An additional deduction of \$65,365.49 for California franchise tax based on 1942 net income is allowed as follows:

Additions to 1942 net income.....	\$1,010,202.82
Deductions from 1942 net income.....	\$179,982.67
Less: California franchise tax adjustment....	117,105.85

Net increase in 1942 income.....	\$ 947,326.00
California franchise tax at 6.90 per cent on \$947,326.00.....	\$ 65,365.49

(d) The adjustment of depreciation results in a net decrease of \$267,299.86 as follows:

	Claimed	Allowed	Adjustment
Fixtures .....	\$ 513,721.94	\$324,327.84	\$189,394.10
Furniture .....	312,949.41	221,000.73	91,948.68
Alterations leased premises..	123,001.15	109,987.56	13,013.59
Expenditures capitalized			
prior to 1941 .....	none	17,481.32	(17,481.32)
1942 building costs .....	none	1,372.83	( 1,372.83)
Other 1942 costs .....	none	2,391.58	( 2,391.58)
(1) Banking premises acquired from subsidiary ....	272,697.67	278,508.45	( 5,810.78)
Totals .....	\$1,228,180.95	\$960,881.09	\$267,299.86

(1) Additional depreciation of \$5,810.78 is allowed on banking premises acquired by you from your wholly owned subsidiary, Mer-

hants National Realty Corporation. The increase results from the adjustment of the cost basis due to the disallowance of losses on sales of the premises as claimed by the subsidiary on its 1941 and 1942 returns.

(e) The deduction for rent paid to the Merchants National Realty Corporation consists of the total expenses and charges of such lessor company which are allowable for income tax purposes, less an amount equal to the total income of such lessor derived from all sources. Examination of the records of the Merchants National Realty Corporation discloses the following net decrease in expenses and allowable deductions of that company:

(1)	Depreciation .....	\$34,918.34
	Less:	
(2)	Loss on the sale of real estate increased.....	20,480.03
	Net decrease .....	\$14,438.31
(1)	Depreciation is decreased as follows:	
	Decrease in depreciation claimed on properties other than properties acquired from you during 1941, 1942 and 1943 .....	\$56,735.77
	Depreciation on properties acquired from you during 1941, 1942 and 1943. (Adjustment due to increase in cost basis due to disallowance of losses on sales to you) .....	21,817.43
	Depreciation decreased .....	\$34,918.34
(2)	Loss on the sale of real estate is increased as follows:	
(A)	Increase due to depreciation adjustments to other than Hynes property.....	\$10,648.97
(B)	Increase in loss on Hynes property.....	9,831.06
	Total increase .....	\$20,480.03
	(A) Loss on the sale of real estate is increased due to the adjustment of the cost basis resulting from changes in the depreciation allowance made for prior years.	
(B)	Additional loss on Hynes property is computed as follows:	
	Cost basis increased due to previous disallowance of loss on sale by you.....	\$10,212.98
	Depreciation allowed .....	\$946.22
	Depreciation considered in computation of loss as reported.....	564.30      381.92
	Additional loss .....	\$ 9,831.06
(f)	Dividend income is increased \$15.18 as follows:	

Dividends received from South San Francisco Land and Improvement Company .....	\$673.33
Taxable portion—16.4872 per cent of \$673.33.....	\$111.01
Amount reported .....	95.83
Increase .....	\$ 15.18
(g) The deduction for capital stock tax is increased \$29,500.00 as follows:	
Tax at \$1.25 on declared value of \$230,000,000.00 as of June 30, 1944, which accrued July 1, 1943 .....	\$287,500.00
Amount claimed .....	258,000.00
Increase .....	\$ 29,500.00

#### Computation of Declared Value Excess-Profits Tax

Net income for declared value excess-profits tax computation .....	\$19,993,680.48
Less: 10 per cent of \$175,000,000.00, value of capital stock as declared in your capital stock tax return for the year ended June 30, 1943....\$17,500,000.00	
Dividends received credit .....	16,926.42
	17,516,926.42
Balance subject to declared value excess-profits tax.....	\$ 2,476,754.06
Amount taxable at 6.6 per cent—\$2,476,754.06 and tax....	163,465.77
Declared value excess-profits tax assessed: Original, Account No. 410257—First California Dist.	1,815.07

Deficiency of declared value excess-profits tax.....	\$ 161,650.70
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#### Computation of Income Tax

Net income for declared value excess-profits tax computation .....	\$19,993,680.48
Add: Interest on obligations of certain instrumentalities of the U. S. issued prior to March 1, 1941 .....	\$932,302.99
Less: Amortizable bond premiums.... 336,336.44	595,966.54
Total .....	\$20,589,647.03
Less: Declared value excess-profits tax.....	163,465.77
Net income .....	\$20,426,181.26
Less: Interest on certain obligations of the U. S. and its instrumentalities issued prior to March 1, 1941.....	8,843,909.00
Adjusted net income .....	\$11,582,272.26

Less: Dividends received credit.....	\$ 16,926.42
Normal-tax net income.....	<hr/> \$11,565,345.84

## Normal Tax Computation

Normal-tax net income .....	\$11,565,345.84
Tax at 24 per cent on \$11,565,345.84.....	<hr/> 2,775,683.00
Total normal tax.....	<hr/> \$2,775,683.00

## Surtax Computation

Net income .....	\$20,426,181.26
Less: Dividends received credit.....	16,926.42
Surtax net income.....	<hr/> \$20,409,254.84
Tax at 16 per cent on \$20,409,254.84.....	\$ 3,265,480.77
Total surtax .....	<hr/> 3,265,480.77
Total normal tax and surtax .....	\$6,041,163.77
Total income tax assessable.....	\$6,041,163.77

## Income tax assessed :

Original, Account No. 410257—First California Dist...	5,126,122.84
Deficiency of income tax.....	<hr/> \$ 915,040.93

Filed T.C.U.S. August 21, 1945.

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## [Title of Tax Court and Cause.]

## ANSWER TO AMENDED PETITION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed by the above-named petitioner, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the amended petition.

4 and 4(a) to (i), inclusive. Denies that the Commissioner erred in the determination of the deficiencies as alleged in paragraph 4 of the amended petition and subparagraphs (a) to (i), inclusive, thereunder.

5(a) to (c), inclusive. Admits the allegations contained in subparagraphs (a) to (c), inclusive, of paragraph 5 of the amended petition.

5(d) to (f), inclusive. Denies the allegations contained in subparagraphs (d) to (f), inclusive, of paragraph 5 of the amended petition.

5(g). For lack of information, denies the allegations contained in subparagraph (g) of paragraph 5 of the amended petition.

5(h). Admits that during the year 1943 petitioner owned furniture and fixtures which it used in its business and which had been acquired at various times. Admits that petitioner deducted \$312,949.41 for furniture and \$513,721.94 for fixtures as depreciation in its income and declared value excess profits tax return for the year 1943. Admits that respondent reduced said deductions by amounts of \$91,948.68 for the furniture and \$189,394.10 for the fixtures and allowed revised deductions for depreciation in the amount of \$221,000.73 for the furniture and \$324,327.84 for the fixtures; denies the remaining allegations contained in subparagraph (h) of paragraph 5 of the amended petition.

5(i). Admits that during the year 1943 petitioner owned certain banking premises including the build-

ings thereon, but denies the remaining allegations contained in subparagraph (i) of paragraph 5 of the amended petition.

5 (j) and (k). Denies the allegations contained in subparagraphs (j) and (k) of paragraph 5 of the amended petition.

6. Denies generally and specifically each and every allegation in the amended petition not herein-before admitted, qualified.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ J. P. WENCHEL,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel;  
T. M. MATHER,  
Special Attorney, Bureau of  
Internal Revenue.

Received and Filed T. C. U. S. June 19, 1946.

Served June 20, 1946.

[Title of Tax Court and Cause.]

MOTION FOR LEAVE TO FILE AMENDMENT  
TO ANSWER ASKING FOR INCREASED  
DEFICIENCIES

Comes Now the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and moves that the Court grant leave for respondent to file the attached amendment to the answer asking for increased deficiencies in this proceeding. In support of this motion respondent respectfully represents as follows:

1. The Commissioner, in the deficiency notice of June 5, 1945, determined deficiencies against this petitioner for the taxable year ended December 31, 1943, as follows:

Income Tax Deficiency  
\$915,040.93

Declared Value Excess-Profits  
Tax Deficiency  
\$161,650.70

2. The respondent, subsequent to the making of the said determinations of deficiencies, has examined new evidence and has made additional adjustments with respect to income and deductions of the petitioner for the same taxable year, as more fully set forth in the proposed amendment attached hereto, resulting in increases in deficiencies as now

determined by the respondent and claimed herein, as follows:

Income Tax	DVEP Tax
\$27,296.45	\$4,822.17

3. By reason of the foregoing, the true and correct total deficiencies determined by the respondent and claimed from the petitioner in this proceeding now are:

Income Tax Deficiency  
\$942,337.38

Declared Value Excess-Profits  
Tax Deficiency  
\$166,472.87

4. The various adjustments resulting in the above-mentioned increased deficiencies have been discussed with the petitioner's counsel before this Court, and it is understood that there is no real controversy as to these adjustments, and that the petitioner does not oppose the filing or granting of this motion.

Wherefore, it is prayed that this motion be granted.

CHARLES OLIPHANT, ECC  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.

T. M. MATHER,  
E. C. CROUTER,  
Special Attorneys, Bureau of  
Internal Revenue.

No objection:

/s/ GEORGE H. KOSTER,  
Counsel for Petitioner.

Filed T. C. U. S. November 7, 1949.

Granted November 7, 1949. Marion J. Harron,  
Judge.

Served November 7, 1949.

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[Title of Tax Court and Cause.]

**AMENDMENT TO ANSWER ASKING  
FOR INCREASED DEFICIENCY**

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, as an amendment to his answer on file in this proceeding, alleges as follows:

1. That the Commissioner of Internal Revenue in his determination of deficiencies reflected by deficiency notice of June 5, 1945, which forms the basis of this proceeding, determined deficiencies as follows:

Income Tax Deficiency  
\$915,040.93

Declared Value Excess-Profits  
Tax Deficiency  
\$161,650.70

2. That the Commissioner, since the making of the above-mentioned deficiency determinations, has made further examinations and determinations with respect to the petitioner's income tax and declared value excess-profits tax liabilities for the taxable year 1943, and has considered additional evidence relating to such liabilities.

3. That the Commissioner has now determined that the petitioner, for the said taxable year ended December 31, 1943, had additional net income in the amount of \$73,063.27, based upon the following adjustments:

Net income for d.v.e.p. tax computation as disclosed by report  
dated 5/18/45.....\$19,993,680.48

As corrected ..... 20,066,743.75

Net adjustment as computed below ..... 73,063.27

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Unallowable deductions and additional income:

(a) Rent—Merchants National  
Realty Corp. ..... \$17,180.01  
(b) San Clemente Trust ..... 19,993.02  
(c) Real Estate taxes ..... 11,247.09  
(d) Reimbursement on leasehold  
improvements ..... 1,412.80  
(e) Interest ..... 226.02  
(f) Gain on sale of other real estate ..... 34,219.48  
(g) California franchise tax ..... 65,365.49

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Total ..... 149,643.91

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Nontaxable income and additional deductions:

(h) Taxes ..... \$19,358.05  
(i) Insurance ..... 9,477.21  
(j) Depreciation ..... 47,745.38

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Total ..... 76,580.64

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Net adjustment ..... \$ 73,063.27

4. That by reason of the foregoing the petitioner's true and correct tax deficiencies for the said taxable year, based upon all of the grounds of determination reflected in the original deficiency notice and the redetermination stated above, now are as follows:

Income Tax Deficiency	Declared Value Excess- Profits Tax Deficiency
\$942,337.38	\$166,472.87

5. The respondent therefore respectfully requests that this Court redetermine the petitioner's income and declared value excess-profits tax deficiencies to be in the amounts stated in paragraph 4 supra, claim for which increased deficiencies is hereby made in this proceeding.

Wherefore, the respondent prays that this Court redetermine the deficiencies herein to be

	Declared Value Excess-	Profits Tax Deficiency
	Income Tax Deficiency	Income Tax Deficiency
Original .....	\$915,040.93	\$161,650.70
Increased .....	27,296.45	4,822.17
<hr/>		
Total.....	\$942,337.38	\$166,472.87

claim for which is hereby made pursuant to the provisions of Section 272(e) of the Internal Revenue Code.

/s/ CHARLES OLIPHANT, ECC  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel.

T. M. MATHER,  
E. C. CROUTER,  
Special Attorneys, Bureau of  
Internal Revenue.

Filed T. C. U. S. November 7, 1949.

Served November 7, 1949.

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[Title of Tax Court and Cause.]

#### STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto through their respective counsel that in addition to the facts admitted by the pleadings, the following facts shall be taken as true, pro-

vided, however, that this stipulation shall be without prejudice to the rights of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true.

1. In a report of examination of the Bank of America National Trust and Savings Association, the petitioner (hereinafter referred to as the Bank), in 1939 by the bank examiners of the office of the United States Comptroller of the Currency, the examiners criticized the Bank for several things and made the contention that the Bank was carrying its banking premises on its books at figures in excess of value and recommended that the Bank be required to charge off a substantial portion of its banking premises account.

2. After a number of conferences and exchanges of correspondence between the Bank and the office of the Comptroller of the Currency, an agreement was reached on March 6, 1940, upon a method of procedure for settling differences and disputes. The question concerning the valuation of banking premises was covered in paragraph 5 of this agreement which was known as "Requirements of the Comptroller of the Currency," reading as follows:

"The Bank shall, as soon as possible, furnish to a committee composed of the Vice President in Charge of Examinations of the Federal Reserve Bank of San Francisco, or some officer of the Bank designated by him, the Supervising Examiner of the Federal Deposit Insurance Corporation for the Twelfth District, and the Chief National Bank Examiner for the Twelfth Federal Reserve District,

all obtainable records and information with respect to the acquisition of each banking premise criticized in the report of examination of August 31, 1939, including those shown on the Bank's books and in its investment in Merchants National Realty Corporation, dating back to the time such premise was acquired either by the Bank or any member (either bank or company) of the group presently or then comprising the Transamerica organization. The committee shall consider the fair value of each premise at the time of such acquisition, and the special conditions which had to be met in fixing the price paid. From these considerations, the committee shall determine the amount which shall be used by the committee as the estimated cost amount of each premise to the Bank. The value of each premise shall then be established at such estimated cost amount, plus the amount of any expenditures subsequent to acquisition found by the committee to have been appropriately capitalized, less the appropriate amount of depreciation at the depreciation rate allowed by the Bureau of Internal Revenue for each year of ownership. The unallocated reserve set up by the Bank shall be reduced by the difference between the present carrying value of each such premise and the value of such premise as determined by the committee in the manner hereinabove stated. The decision of a majority of the members of the committee shall be binding. The remainder of such reserve, if any, may be returned to the undivided profits account. A partial release of the reserve, or a decrease in the amount of the reserve to be set up, may be

made as soon as that procedure is justified, in the opinion of the committee.”

3. After several conferences between the Bank and the Office of the Comptroller of the Currency with respect to the settlement of said Requirement 5, an understanding was reached as set forth or referred to in letters dated March 11, 1941; June 16, 1941; June 17, 1941; December 9, 1941; March 20, 1942, and April 11, 1942, copies of which are hereto attached as Exhibits 1-A to 6-F, inclusive.

4. The Bank operates a branch banking system in California through approximately 500 branches and it and Merchants National Realty Corporation, its wholly owned subsidiary (hereinafter referred to as Merchants), owned most of the banking premises in which this business was conducted. During this controversy with the Comptroller, the Bank had maintained the position that it had the right to carry its banking premises on its books at cost less normal depreciation and that the Comptroller had no authority to require a write-down of the banking premises account; and, when the Bank agreed with the Comptroller to reduce its banking premises account in order to settle the issue with the Comptroller, it did so in the manner stated below to which the Comptroller had no objection.

5. On account of the foregoing, the following transactions were effected:

(a) In the years 1941 and 1943, the Bank executed and delivered to Capital Company deeds with respect to certain banking premises. After thirty

days or so after the time Capital Company received the said deeds, Capital Company executed and delivered deeds to said property to Merchants. The schedule attached hereto and marked Exhibit 8-H identifies the properties involved in the transaction and shows information concerning the transaction as indicated in said schedule.

(b) In the years 1941 and 1942 Merchants executed and delivered to Capital Company deeds with respect to certain banking premises. After thirty days or so after Capital Company received these deeds, Capital Company executed and delivered deeds to said property to the Bank. The schedule attached hereto and marked Exhibit 9-I identifies the properties involved in the transaction and shows information concerning the transaction as indicated in said schedule.

(c) Prior to the transactions described in the preceding sub-paragraphs (a) and (b), Mr. R. G. Smith, Vice President of the Bank, talked to Mr. E. C. Woodruff, President of Capital Company, a company engaged in the real estate business, and explained the Bank's controversy with the Comptroller, and the following agreement was reached between Messrs. Smith and Woodruff in behalf of their respective companies:

That the Bank or Merchants would execute deeds to Capital Company with respect to the banking premises described in Exhibits 8-H and 9-I attached; that Capital Company would accept delivery of such deeds; that Capital Company would deliver its checks to the Bank and to Merchants in amounts

equal to the value of said premises as appraised by the American Appraisal Company; that the Bank intended to and would receive back, deeds to the said property within thirty days or so after delivery of deeds thereto to Capital Company, and Capital Company agreed to execute and deliver deeds to said property to the Bank or Merchants at any time upon request of the Bank; that there would not be any written agreement between the Bank, Merchants and Capital Company providing for the execution and delivery of deeds from Capital Company to the Bank or to Merchants; that when the Bank requested delivery of deeds to such property from Capital Company to it or to Merchants, the Bank or Merchants would give its check to Capital Company for the same amount of the check which Capital Company gave the Bank or Merchants for the respective property, plus acquisition costs incurred by Capital Company in connection with the transaction; and that between the time of the delivery of the deeds with respect to the respective properties from the Bank or from Merchants to Capital Company, and the time of the delivery of the deeds with respect to the respective properties from Capital Company to the Bank or to Merchants, the Bank would pay to Capital Company as rental amounts equal to 6% per annum net upon the amounts paid by Capital Company to the Bank or to Merchants, as aforesaid.

The transactions described in sub-paragraphs (a), (b) and (c) above were effected pursuant to and in accordance with this agreement. When these trans-

actions were under contemplation, the Bank's officers were advised by the Bank's counsel that these transactions might result in a large deductible loss for income tax purposes. The Bank's officers thereupon instructed the Bank's counsel to make adequate disclosure of the transactions on the tax return so that the Internal Revenue Bureau would be fully informed thereof. The counsel's memorandum of his discussion of the matter with the Bank officials is attached hereto as Exhibit 14-N.

At all times mentioned herein the properties involved in the transactions referred to in sub-paragraphs (a) and (b) hereof were occupied and used by the Bank as branch banks and no discontinuance, change or transfer of such use was contemplated.

(d) The only action taken by the respective Boards of Directors of either the Bank, Merchants or Capital Company in connection with the transactions referred to in sub-paragraphs (a) and (b) above, was the action taken by the Board of Directors of Capital Company as set forth in resolutions, copies of which are attached as exhibits 11-K, 12-L and 13-M.

6. In carrying out the aforesaid transactions, all formalities in connection therewith, such as the execution and recording of deeds, the affixing of documentary stamp taxes, the transfer of fire insurance, and the recording of the transactions on the books of all companies as purchases and sales of property were complied with. When the properties were deeded to Capital Company, the outstanding fire insurance policies covering the respective properties

were amended by rider to provide that any loss payable thereunder should be paid to Capital Company; and when Capital Company deeded the properties to the Bank or to Merchants the policies were again amended by rider to provide that any loss payable thereunder should be paid to the Bank or to Merchants respectively. Upon the execution and delivery of the deeds to the respective properties by the Bank or Merchants to Capital Company, the Bank and Capital Company executed a "lease" agreement with respect to each property, a form of which lease agreement is attached as Exhibit 10-J, and the rentals received under said lease agreements were reported by Capital Company as rental income on its income tax return, and by the Bank as rental expense on its tax return.

7. During the years 1941 to 1943 inclusive, Merchants was a wholly owned subsidiary of the Bank. The only business of Merchants was the ownership of property and the rental of that property to the Bank for use as banking premises under a lease arrangement which is set forth in the written lease, copy of which is attached hereto as Exhibit 7-G. The properties deeded by Capital Company to Merchants as stated above, were thereafter held by Merchants under this lease. The officers and directors of Merchants during 1943 are listed in the schedule attached hereto as Exhibit 15-O. Merchants had no salaried employees; whatever work was necessary to the operation of the Company's business was performed by employees of the Bank.

8. The differences between the claimed income

tax basis and the amount at which Merchants transferred properties to Capital Company in the transactions referred to in sub-paragraph (b) of paragraph 4 above, were charged to losses by Merchants and became a part of the expenses entering into the formula under which the rental paid by the Bank to Merchants was computed, and so were included in computing the rental paid by the Bank to Merchants in the respective years and were deducted by the Bank on its income tax returns for the respective years as rental expenses.

9. The Respondent disallowed the amounts claimed as losses on the aforesaid transactions and computed allowable depreciation without recognizing any deeds or "sales" of property from the Bank to Capital Company and thence to Merchants. If the Court should hold that deductible losses for income tax purposes resulted from the aforesaid transactions, the amount thereof can be computed by the parties since there is no dispute as to the factors entering into the computation of gain or loss and it is agreed depreciation shall be adjusted accordingly. If the Court should hold that no deductible losses result from the aforesaid transactions, the Respondent's action in disallowing the losses should be sustained, and a recomputation of tax may be made under Rule 50 to give effect to the adjustment referred to in paragraph 12 hereof.

10. (a) During the years 1941 to 1943, inclusive, Capital Company was a wholly owned subsidiary of Transamerica Corporation. On the dates indicated, Transamerica Corporation and its affiliated

companies owned shares of the outstanding capital stock of the Bank as follows:

Date		Common	Preferred
12/31/41	Transamerica Corporation .....	639,300	498,894
	Trans. Sub. Companies .....	260,520	1,950
12/31/42	Transamerica Corporation .....	492,528	423,374
	Trans. Sub. Companies .....	199,866	1,800
12/31/43	Transamerica Corporation .....	400,612	368,470
	Trans. Sub. Companies .....	169,522	2,164

(b) During the years 1941 to 1943, inclusive, the capital stock of the Bank of America N. T. & S. A. consisted of \$20 par value preferred stock and \$12.50 par value common stock and the total number of shares outstanding at the end of each of the years 1941 to 1943 was as follows:

	1941	1942	1943
Common—Shares .....	4,000,000	4,000,000	4,000,000
Preferred—Shares .....	540,000	460,796	405,146

Each share of both classes had equal voting power.

(c) On the dates indicated, Transamerica Corporation had outstanding shares of its \$2 par value common capital stock, as follows:

Date	No. of Shares
12/31/41 .....	10,281,100
12/31/42 .....	10,090,000
12/31/43 .....	9,982,000

(d) On the dates indicated, the Bank of America N. T. & S. A. owned shares of Transamerica Corporation capital stock as follows:

Date	No. of Shares
12/31/41 .....	none
12/31/42 .....	3,624
12/31/43 .....	none

11. The directors and officers of the Bank during

1943 are listed in the schedule attached hereto as Exhibit 16-P.

12. It is agreed that in addition to the adjustments set forth in the deficiency notice and not contested herein, the net income for 1943 may be increased by the further amount of \$73,063.27, in accordance with Respondent's Amendment to the Answer.

13. In addition to the income taxes assessed and paid for the year 1943 as shown by the pleadings, the Petitioner made payments to the Collector of Internal Revenue on February 21, 1947, on account of taxes for the year 1943 as follows:

Income Tax .....	\$ 915,040.93
Declared Value Excess Profits Taxes.....	161,650.70
Total.....	\$1,076,691.63

Signed at San Francisco, California, this 4th day of November, 1949.

/s/ GEORGE H. KOSTER,  
Attorney for Petitioner.

/s/ CHARLES OLIPHANT, ECC  
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

Filed T. C. U. S. November 7, 1949.

The Tax Court of the United States  
Docket No. 8993

BANK OF AMERICA NATIONAL TRUST AND  
SAVINGS ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Monday, November 7, 1949

Met, pursuant to notice, at 5:20 o'clock p.m.  
Before: Hon. Marion J. Harron, Judge.

Appearances:

GEORGE H. KOSTER,  
300 Montgomery Street, Room 839,  
San Francisco, California,  
Appearing on behalf of the Petitioner.

EARL C. CROUTER,  
(Hon. Charles Oliphant, Chief Counsel,  
Bureau of Internal Revenue), appearing  
for the Respondent.

#### PROCEEDINGS

The Clerk: I will call Docket 8993, Bank of America.

Please state your appearances.

Mr. Koster: George Koster, for Petitioner.

Mr. Crouter: And Earl Crouter, for Respondent.

The Court: Mr. Koster, will you proceed.

Mr. Koster: I think before I make my opening

statement, your Honor, Mr. Crouter has some amendment to the Answer to be filed. There is no objection.

The Court: The amendment to the Answer may be filed.

Mr. Crouter: Thank you very much. This is in the form of a motion for leave, and the motion has been marked "no objection," to which Mr. Koster has signed and then the amendment to the Answer is attached, and I have filed the original and several copies with the Clerk.

The Court: Mr. Baird, you may stamp the motion "granted." The Petitioner has the usual time within which to reply to that, if you wish.

Mr. Koster: There is no reply necessary, your Honor. The matter is set forth in the amendment to the Answer. It has been conceded, and will be shown in the stipulation which will be filed later.

The Court: Very well. [3\*]

#### Opening Statement on Behalf of Petitioner

By Mr. Koster:

This case, your Honor, involves a proposed deficiency in income taxes for the calendar year 1943. The only contested issue is whether this Petitioner Bank is entitled to a deduction for a loss sustained in the sale of certain real property where a wholly-owned subsidiary of the Petitioner Bank later acquired the property by purchase from the purchaser from the Bank. There were a number of other issues raised in the Petition but they have been abandoned

\* Page numbering appearing at top of page of original Reporter's Transcript of Record.

and, as I have just stated, the additional matter set forth in the Respondent's amendment to the Answer has been conceded by a provision in the stipulation to that effect. The stipulation will be filed after the conclusion of the statements.

The facts about the contested issue are these: Prior to 1940 the Comptroller of the Currency of the United States made a demand upon the Bank of America to charge off a part of its investment in banking premises. The Petitioner, Bank of America, operates about 500 branch banks throughout the State of California and most of these branches perform a banking business in premises which are owned by the bank.

Now, the bank resisted the demand of the Comptroller, contending, first, that it had a right to carry its banking premises on its books at cost less depreciation; second, that the Comptroller had no legal authority to require the bank to [4] charge off part of its banking premises investment account; and, thirdly, that in any event its total investment in banking premises as shown on its books was less than the market value of the banking premises at that time. In order to establish that third contention, the bank did proceed to have its banking premises appraised by the American Appraisal Company.

After considerable negotiation the controversy with the Comptroller was settled. Under the settlement the bank agreed to make a charge off of around \$3,000,000 of its account, its investment in banking premises, with the understanding, however, that it would effect the charge off in a manner which would

be consistent with the position which it had maintained throughout the controversy. In other words, the bank wanted to make this write off, or charge off, in such way that it would not be conceding the authority of the Comptroller of Currency to order a write off and in such way that the write off would not be a precedent for possible similar action in the future.

So, in carrying out the agreement, the settlement, the bank sold certain of these banking premises to Capital Company. Capital Company is a non-affiliated company engaged in the real estate business. Capital Company paid the purchase price, which incidentally was the price at which the particular properties were appraised by the American Appraisal Company. They paid the price in cash. All other formalities [5] that are usual in a purchase and sale transaction were carried out. The Bank leased the properties back from Capital Company during the period of time that Capital Company held them and the Bank paid a rental for the use of the property under the terms of the lease.

About 30 days or so after Capital Company acquired the property, it sold the property to the Merchants National Realty Corporation, which is a wholly-owned subsidiary of the Bank. The Merchants National Realty paid the same price for the property that Capital Company had paid for it.

Now, when the Bank was contemplating the sale to Capital Company, the Bank was advised by its counsel that the transaction might involve a large loss, which might be deductible for income tax pur-

poses. The Bank thereupon instructed its counsel to make a disclosure of the transaction on the return so that the Internal Revenue Bureau would be fully informed of the fact that the transaction took place, and the Court will observe that there is attached to the 1943 return as well as some prior year returns information which calls attention to the transaction.

I might add here that as part of the settlement of the controversy the Bank agreed to take these losses over a period of years, so that these losses occur in the years 1941, 1942, and 1943. However, the years 1941 and 1942 are open under refund claims. They were not prosecuted by petition to [6] the Tax Court and the year 1943 is the year which is involved in this particular proceeding.

When the Bank made the sales to Capital Company, it took the difference between its book cost and the price at which it sold the properties to Capital Company as a loss, and that constituted the charge off which met the requirements of the Comptroller of the Currency. The Commissioner of Internal Revenue, the Respondent, has disallowed the loss which was shown on the return and computed in that manner; that is, the difference between the selling price to Capital Company and the net cost to the Bank was taken as a loss deduction.

The parties to the proceeding are in accord with respect to all of the factors that enter into the computation of gain or loss, so that if the Court should determine that these transactions are transactions which must be recognized for tax purposes, then this difference between the cost or this excess of the cost

over the selling price can be determined and can be given effect in a Rule 50 computation. There is no dispute with respect to those factors.

The Court: Now, what is the amount of the loss that was claimed and which was disallowed?

Mr. Koster: The amount of the loss which was claimed is shown in an exhibit which is referred to as Exhibit 8-H, attached to the stipulation of facts which will be presented, and is in the amount of \$464,811.68. That was the [7] amount of the loss which was taken on the books and was shown on the tax return and which has been disallowed as shown by the deficiency notice.

The Court: I didn't quite follow your last statement before I asked this question. You say that something can be worked out under Rule 50. As I understand it, the issue is whether the taxpayer is entitled to a loss in 1943 in the amount of \$464,811.68 or is not.

Mr. Koster: I wouldn't put it that way, your Honor. The issue is whether or not, assuming that in any event the cost exceeded the selling price, whether this petitioner is entitled to a deduction for the loss sustained in the transaction.

I might say that there have been some cases which this taxpayer has prosecuted with respect to depreciation rates on these properties. Those cases have recently been concluded and the effect of those cases will be shown in the computation of the correct cost, but there will be in any event an excess of cost over selling price.

The Court: Where have those cases been? In the Tax Court or in some other court?

Mr. Koster: They were carried through the District Court to the United States Supreme Court.

The Court: I am interested in that. Do you have the citation? [8]

Mr. Koster: It is Bank of America National Trust and Savings Association vs. United States. My recollection is that the Circuit Court of Appeals decision was 167 Federal 2nd.

The Court: And when did the Supreme Court decide the case? In 1949?

Mr. Koster: The Supreme Court decided the case in the last term, 1948, by denial of certiorari.

The Court: Oh, certiorari was denied by the Supreme Court?

Mr. Koster: Yes. I think it was in the early part of 1949, in that term.

The Court: And that term was before the Ninth Circuit Court out here?

Mr. Koster: Yes.

The Court: And the Ninth Circuit held what?

Mr. Koster: The case was contested on—I don't know whether the Court recalls the Virginia Hotel Corporation case, in which the question was whether the basis should be reduced by a basis of depreciation taken in earlier years, taking the cost of depreciation in later years. We, in effect, relitigated that and got the same answer the Virginia Hotel Corporation did, so it did change the rates. But there is no dispute and, in any event, the net cost will still

exceed the selling price at which the properties were sold. [9]

The Court: If I may summarize that, just to check on my own understanding of it, if it should be held in this case that the taxpayer is entitled to a loss in 1943 on account of these transactions, then the amount of the loss may have to be recomputed under Rule 50 because the basis might have to be adjusted to take care of depreciation?

Mr. Koster: That is correct, your Honor, and there is no dispute between the parties about that adjustment.

The Court: All right, then. Thank you for clearing that up. Have you concluded your opening statement?

Mr. Koster: I have.

The Court: Will you proceed then, Mr. Crouter.

Opening Statement on Behalf of Respondent  
By Mr. Crouter:

If the Court please, I believe the salient points in the case have been referred to by Mr. Koster and I would merely like to point out one or two things here. This proceeding, of course, relates only to the year 1943 and the Court probably has noticed that schedule which is marked Exhibit 8-H of the stipulation.

Mr. Koster: The Court hasn't had it yet.

Mr. Crouter: I am sorry about that. With counsel's permission, I would like to show that to the Court, because it does summarize the eight transactions involved in the year 1943 about which the

whole case really turns. [10]

Now, the only contested issue arises under Paragraph 4-A of the Petition, and that alleges the Commissioner erred in disallowing a loss in the amount of \$464,811.68, sustained by the Petitioner during the year 1943. The Court will observe that that is the same money figure in the last money column in that Exhibit 8-H and that is the summary value of the losses alleged to have been sustained by the Petitioner on the disposition of all of these eight properties.

Now, the parties have stipulated that all of these properties listed, such as Oakland Main and Sacramento Main and so forth, were, as indicated by the figures, substantial banking premises of the Petitioner, Bank of America. By that it is clearly shown, I believe, that they were properties, real estate and buildings, where there were very active banking affairs and business carried on by Petitioner.

This schedule will show that the property during the calendar year 1943 on the date indicated at the extreme right—let's trace one through, such as Sacramento Main. On June 6, 1943, there was a deed executed by the Bank to Capital Company. Then on July 29, 1943, approximately a month later, there was another deed executed by Capital Company over to Merchants.

Now, the 1943 return of Merchants, referred to as such—it is the Merchants National Realty Corporation, a complete one hundred per cent subsidiary of our taxpayer, the [11] Bank of America—the return on Merchants will show that it was operated

chiefly to hold the real estate properties of the Bank. That return will show that that corporation held in excess of \$14,000,000 worth of properties designated "bank premises" at the end of 1943, and the Commissioner's position is, as stated in his deficiency notice and as maintained throughout the case, that no deductible loss was sustained by the Petitioner in connection with these transactions, which for lack of a shorter and better term have sometimes been referred to as "three-cornered" transactions.

I believe I should also explain, and the stipulation makes it clear by stockholdings and percentages, that this also involves the Transamerica Corporation. That, of course, is the top corporation which owned and controlled many other corporations in connection with the Bank of America banking affairs and other matters, but there is not 50% or more of legal control by Transamerica. The Capital Company, to which the deeds went from our taxpayer, was a complete one hundred per cent subsidiary of Transamerica but the stipulated facts here show, I believe, and I want Mr. Koster to correct me if I err in any figure here, because I don't intend to mislead the Court—I believe during our year 1943 Transamerica owned between 21 and 22 per cent of the total preferred and common stock of the Bank; that is, Bank of America. So that Transamerica, whether it had actual control through that stock [12] ownership I don't believe it too material here. It didn't have legal control. On the other hand, our taxpayer, Bank of America, and referred

to in this stipulation as "the Bank" had one hundred per cent control of this Merchants Realty Corporation.

So we have transfers, and all of the transfers involved in our taxable year 1943, as shown by this Exhibit 8-H, are deeds from the Bank to Capital Company for a period of about 30 days, sometimes one day less, sometimes one day more, then deeds of the identical properties at the identical values from Capital Company back to Merchants. So that the Commissioner's position is that by these transactions the Bank really has not sustained any loss. The Bank still owned the property on the conclusion of these transactions and it is stipulated that the Bank never discontinued its banking business on those premises, it never intended to discontinue or change or transfer its banking business in those locations. Our stipulation goes even further, if the Court please, and in Paragraph 5, Subparagraph 5 of Paragraph 5, of the stipulation it is stipulated and agreed that there was an agreement between the Capital Company through its President, E. C. Wood, and the Bank, our Petitioner, through its Vice President, Mr. R. G. Smith.

Now, this was an oral agreement. It was not in writing but it has been spelled out what was understood and [13] agreed upon between the two corporations prior to the execution of these deeds, or in connection with them. It reads: Prior to the transactions described—and that means the execution of any of these deeds—the deeds would be executed as Mr. Koster has stated. Near the bottom of Paragraph 5, a part of that agreement, was

"that the Bank intended to and would receive back deeds to the said property within 30 days or so after delivery of deeds thereto to Capital Company, and Capital Company agreed to execute and deliver deeds to said property to the Bank or Merchants at any time upon request of the Bank;" and then there is some further provisions. I do not attempt to read all of that, but that is the provision there, relating to the understanding and agreement.

So that the Respondent's position is that this series of transactions was somewhat in the nature of the so-called accommodation purchases and sales of securities and stocks. Now, the Court undoubtedly has already noticed that——

The Court: You think this is a Gregory versus Helvering case, too?

Mr. Crouter: I believe the principle applies there, too.

The court will notice that these are not securities; so, as I view the case, I don't believe we have any direct application of the provisions of Section 118 of the Revenue [14] Code, where you have a thirty-day provision mentioned and certain principles set down. This involves deeds to real estate, so that the tax question comes up merely as a loss sustained on the transactions. The Respondent will contend that all of the transactions must be considered together, because they are all part of a large overall plan between these various corporations, and the exhibits in evidence will clearly show that they are related corporations in this great banking enterprise which has done a great deal in the West. Nothing of a

policy matter is involved, but the tax question does come up and is presented to the Court as to whether these transactions are at armslength or whether they are for business purposes and whether they shall be recognized, and Respondent will argue that in the economic sense, in the real sense here, this taxpayer has never lost these properties. It has not sustained any loss as required in the tax cases. It is a controlled transaction and series of transactions between these corporations.

In that connection I want to say that counsel for the Petitioner and the Petitioner's various officers have been free and above board in disclosing facts and cooperating with the Government and furnishing to the Government everything that we can conceive of that would have a bearing on the case, and if we have erred in connection with the stipulation, it is probably in including too much. [15]

I should also say that there is no question of penalty involved here. It is just a straight deduction question, so that the question of disclosure is somewhat immaterial. The claim was made for the deductions on all of the returns filed by the Petitioner and the prior years, of course, are not directly involved. Those are the years 1941 and 1942.

However, the stipulated facts do show some of the similar transactions in 1941 and 1942, and Respondent will contend on brief that this whole pattern must be considered together to show how the transactions were carried out, mostly between these three corporations. Sometimes the original deed would be by our Petitioner Bank, and sometimes we will have

the reverse of this: We will have the Merchants deeding to Capital, and then Capital back to our taxpayer. Respondent will contend that it really doesn't make too much difference as far as the ownership of depreciable bank premises is concerned, as Respondent sees it, whether the Bank itself owns the property and has the deeds in its name.

The record along that line will show that the Bank did own some \$25,000,000 worth of banking property. The annual reports are included, and they will show total figures on that but they also show that Merchants, as I have stated, owned 13 or 14 million dollars worth of banking property.

The Court: May I interrupt you there. Is a [16] consolidated return filed for Merchants and Bank of America?

Mr. Crouter: No. They are separate returns.

The Court: Well, the Merchants would take the depreciation on bank property that it held, and the Bank would take depreciation on property which it held. It would make some difference to that extent, then, who owns title to the property.

Mr. Crouter: Except in this sense, that, as shown by the stipulated facts, there was a rental formula between Merchants and the Bank, based upon the income of Merchants and all the deductions which would be allowed and recognized under the Federal Law as deductions to Merchants. So that governed the amount of rental which the Bank had to pay to Merchants. So in that way I presume that the deduction factor and all of those things entered into

the picture and there was a squaring of accounts between the corporations.

But the facts will show that this subsidiary and the Bank did not deal at arm's length. It shows that they had the same office, I presume. They had the same address, 300 Montgomery Street. The subsidiary, Merchants, had no salaried officers of its own. Its affairs were carried out apparently chiefly by the officers and employees of the Bank.

Now as to the depreciation question, I want to make it clear that the Commissioner has allowed depreciation on these banking properties under the old basis without recognizing [17] the so-called sales and any adjusted new basis. So that the Commissioner has been consistent in giving them their recovery of property through the depreciation allowances on the old basis.

Now, on that score, of course, if the Court should hold that the transaction should be recognized and losses were sustained, why that, as we see it, would automatically establish and sustain a newer depreciation basis, which would be less than the Commissioner has recognized, so that it would be necessary to have smaller amounts allowed as depreciation deductions. That, I take it, though, could all be handled and disposed of under Rule 50 computations, once our main questions are decided.

Now, with that, and I have probably been too long, I don't believe I have anything else to say except that our exhibits have been tied into our stipulated facts and they include the annual reports of the Bank and also one annual report of Transamerica,

which have some bearing on the facts, down through the Joint Exhibits Nos. 20-T. Thank you.

Mr. Koster: May I make just one comment, your Honor?

The Court: May I ask a question before you proceed, Mr. Koster?

Mr. Koster: Yes.

The Court: I didn't listen carefully enough to part [18] of the statement, and so I didn't catch the explanation of what the Capital Company was. Is that an outside corporation, or is it in the Bank of America family?

Mr. Koster: No. I will just give you a little background, your Honor. Up to 1937 Transamerica Corporation owned all of the stock of the bank. It also owned and has continued to own right up to this date all of the capital stock of Capital Company. In 1937 Transamerica started a movement to reduce its holdings of bank stock. It first distributed 52% of it to its stockholders, some 120,000 stockholders, and it later made sales and other dispositions, so that by the year 1941, '42, and '43, the years we are talking about here, Transamerica owned about 22% of the stock of the bank and it has since divested itself of more stock so that it only owns about 11%. It has been getting rid of its holdings of that company through pressure from the Government principally.

The Court: You mean Bank of America?

Mr. Koster: Bank of America.

The Court: Well, what is Capital Company? Is it in the banking business or is it a real estate business or a holding company?

Mr. Koster: It is a real estate company, a substantial, large real estate company.

The Court: It wasn't organized just to [19] hold bank premises?

Mr. Koster: No. It has been engaged in the real estate business in California for years.

The Court: Shall we assume that the bank owned quite a lot of property, that is—

Mr. Koster: Capital Company.

The Court: Well, all of Capital Company's stock is owned by Transamerica?

Mr. Koster: That is correct.

The Court: So that Capital Company is in the, shall we say, Giannini banking structure and is engaged in the real estate business in general?

Mr. Koster: That is right.

The Court: This is just a loose summary just to give the Court some idea of what Capital Company is.

Mr. Koster: That is right. Incidentally, the annual report which we will submit here as one of the statements, one of the exhibits in evidence, shows that Capital Company has total assets in 1943 of some \$37,000,000.

The Court: The detail isn't material here.

Mr. Koster: I wish to mention this, in talking about the Giannini interests: Ever since 1937 the Giannini interests of Transamerica have contended that they have not had control of the bank and, as I have told you, their stock interest has dwindled down until it was 22% and it is now only [20] 11%, and it has continued to represent that it has been

disposing of that interest and it does not control the bank. But, in any event, for our purpose here we didn't think that it was material enough other than to show the stock ownership.

The Court: Well, I shall not be much concerned with that. I just wanted to get some idea of what Capital Company was.

Mr. Koster: Yes.

The Court: Now I believe there is something else you wanted to say, Mr. Koster?

Mr. Koster: Yes, your Honor. You mentioned the Gregory case. We feel pretty free and easy about presenting this case here, because we are not worried about one of those cases where you perform a transaction entirely or solely for tax purposes. This transaction, as I have explained, was induced by the controversy with the Comptroller of the Currency.

The Court: I think I understand that. Your argument is just exactly what you said in your opening statement. I understood your opening statement.

Mr. Koster: I was under the impression that the Gregory case involved a question solely of tax purposes.

The Court: Well, I understood the Gregory case, because there were a series of transactions according to plan and with short intervals in between, and the case is referred to so frequently in general that I just asked Mr. [21] Crouter if he was going to refer to it, that is all.

Mr. Crouter: May I say one thing further along that line, that the Respondent will contend here, if the Court please, that it was not necessary or in ac-

cordance with a request or any direction of the Comptroller of the Currency, that these transactions have all been carried out in this way. And our Exhibit 20-T, which will be offered, will show to the Court that before these transactions were carried out, the question of how best to handle them from the tax standpoint was very carefully considered by the bank and its officers, and their tax adviser was consulted as to whether they could possibly do it in this way and establish the tax losses. So the Commissioner will argue on these facts that while it may have started with the Comptroller of the Currency and they did have the requirement to meet there, it also was done in this way to attempt to establish a lawful tax deduction. So it was sort of a double-barreled purpose or motive, particularly the motive for carrying it out in this manner.

Mr. Koster: That, we think, the Government will not be able to sustain.

The Court: Well, you will set forth your arguments in your briefs. Will you offer your stipulation now?

Mr. Koster: At this time I wish to offer a stipulation between the parties, a stipulation of facts, which has [22] attached to it and made a part of the stipulation Exhibits from 1-A to 16-P, and then there are also additional exhibits which were not attached and they were not referred to in the stipulation.

The Court: Just hold that a moment, please. The stipulation is received and made a part of the rec-

ord and the exhibits attached to the stipulation, Exhibits 1-A to 16-P, are received in evidence.

(Whereupon the documents were marked for identification as Joint Exhibits 1-A to 16-P, inclusive, and were received in evidence.)

### JOINT EXHIBIT 1-A

March 11, 1941.

Messrs. William P. Funston, Supervising Examiner, Federal Deposit Insurance Corporation;

R. B. West, Vice President, Federal Reserve Bank of San Francisco; and  
Irwin D. Wright, Chief National Bank Examiner,

San Francisco, California.

Gentlemen:

As you know, we have maintained that our asset values for bank premises should be our acquisition cost plus capital additions less depreciation allowance for ordinary wear and obsolescence from the date of acquisition. We have consistently maintained that the over-all book value of our bank premises is proper and conservative. In this contention we believe that we have been sustained by current American Appraisal Company valuations. You also know that there has been disagreement on this question.

It is my understanding that the adjustment committee appointed pursuant to the provisions of Paragraph 5 of the Comptroller's "Requirements" of March 6, 1940, is not agreed as to the use of the

formula set forth in that paragraph. I understand further that the committee is prepared to give favorable consideration to the following plan, which will be regarded as fully satisfying Requirement 5 and will meet the basic ideas of the committee, and will at the same time be consistent with the policy we have followed.

We will agree to establish a new cost basis for the bank premises listed in Exhibit "A" hereto attached in such manner as will result in a charge of approximately \$1,000,000 against our profits for the period ending June 30, 1941, and a similar charge in the third quarter of 1941. The new cost basis to be established shall be determined from the American Appraisal Company appraisal, using the lowest appraisal of the American Appraisal Company as to the particular properties involved. No adjustment will be made as to properties with respect to which American Appraisal Company's most adverse appraisal exceeds book value.

Please advise us if this plan has the approval of the committee and is acceptable as meeting all of the requirements of Paragraph 5 of the Comptroller's "Requirements" dated March 6, 1940, so that we may proceed without delay to carry out the contemplated program.

Yours very truly,

R. G. SMITH,

Executive Vice President.

Admitted November 7, 1949.

JOINT EXHIBIT 2-B

Treasury Department  
Comptroller of the Currency

June 16th, 1941.

Mr. Russell G. Smith  
Executive Vice President  
Bank of America National Trust  
and Savings Association,  
San Francisco, California.

Dear Mr. Smith:

In connection with Paragraph 5 of "Requirements of the Comptroller of the Currency" dated March 6, 1940, I am in receipt of a communication from the office indicating the Comptroller's willingness to accept the recent recommendation of the Committee that the write-off of \$2,000,000 this year and approximately \$2,000,000 in 1942 be accepted as satisfying the said requirement. It is to be understood, of course, that normal depreciation upon bank buildings will continue.

Any or all of the amount may be charged to Undivided Profits instead of the Unallocated Reserve if desired, the amount of that Reserve, however, not to be reduced below \$4,000,000 except after write-off of the \$2,000,000 in 1941 and approximately \$2,000,000 in 1942. In order to bring this matter to final conclusion, I desire to have confirmation in writing from Mr. L. M. Giannini or some other qual-

ified officer of the bank, agreeing to the disposition of the second approximate \$2,000,000.

Very truly yours,

/s/ IRWIN D. WRIGHT,

Chief National Bank Examiner, Twelfth Federal Reserve District.

IDW:K

Admitted November 7, 1949.

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JOINT EXHIBIT 3-C

June 17, 1941

Mr. Irwin D. Wright,  
Chief National Bank Examiner,  
Twelfth Federal Reserve District,  
No. 1 Montgomery Street,  
San Francisco, California.

Dear Mr. Wright:

We have received your letter of June 16 advising us that you have received a communication from the Comptroller of the Currency indicating his willingness to accept the recent recommendation of the committee appointed under paragraph 5 of the "Requirements of the Comptroller of the Currency" dated March 6, 1940, that the reduction of the cost basis and book value of our banking premises of \$2,000,000 in 1941 and approximately \$2,000,000 in 1942 would be accepted as satisfying Paragraph 5 of the "Requirements."

In our letter of March 11, 1941, addressed to you and other members of the committee, we agree to

establish a new cost basis for the bank premises which would result in a decrease of \$2,000,000 in the book values.

In accordance with our letter of March 11, we have already effected a reduction of \$1,000,000 and will effect a similar reduction in the second half of this year. In compliance with your current request, we now agree to reduce our costs in 1942 by the additional amount of approximately \$2,000,000.

The new cost basis will be determined from the American Appraisal Company's appraisals, using the lowest appraisal for each property. We are not at this time requesting any adjustment with respect to the investments in land and buildings which the American Appraisal Company appraised in excess of book value, which properties the appraisal company valued at \$4,700,000 above book value.

We observe your comments regarding the handling of the unallocated reserve and understand that on conclusion of these arrangements the amount of the reserve may be reduced to \$4,000,000 and subsequently reduced by the amount of reduction in book value of banking premises effected under the terms of this letter and our previous communication of March 11, 1941.

Yours very truly,

R. G. SMITH,

Executive Vice President.

Extra Copy to Mr. Wright.

Copy to Mr. L. M. Giannini.

Admitted November 7, 1949.

## JOINT EXHIBIT 4-D

December 9, 1941

Mr. William F. Huck,  
National Bank Examiner,  
#1 Montgomery Street,  
San Francisco, California.

Dear Mr. Huck:

In your Report of Examination of this Bank, commenced on August 8th, you commented as follows with respect to banking premises:

"In view of the excessive book values of a number of properties carried, book values are to be reduced by periodical charge-offs of at least \$2,000,000 per annum in addition to the regular depreciation taken. This program is to be continued until respective book values of all have been reduced to sound values."

Your comment does not correctly interpret the agreement with the Comptroller of the Currency, with which you are familiar, but causes it to appear indefinite whereas in fact it was definite and specific. You will remember that the agreement was made after detailed consideration of the matter by the special committee appointed in accordance with the "Requirements of the Comptroller of the Currency" and after extended negotiations. You will also remember that the conclusions were accepted by all parties in an effort to compose a difference of opinion.

We maintained then and still maintain that our

carrying value of bank premises should be our acquisition cost plus capital additions less depreciation. We consistently maintained, and continue to maintain, that the actual value of our bank premises greatly exceeds the book value. Our contention in this regard was confirmed by the appraisals of the American Appraisal Company.

I am enclosing copies of the correspondence exchanged between this Bank, the committee appointed by the Comptroller, and the Chief National Bank Examiner of the Twelfth District. You will observe that the final agreement approved by the Comptroller of the Currency was that we would establish a new cost basis for certain banking premises which would result in a reduction of approximately \$4,000,000 in the book values. The new cost basis was to be determined from the American Appraisal Company's appraisals, using the lowest appraisal for each property but without claiming any credit for the excess of \$4,700,000 in properties which the American Appraisal Company appraised above book values.

As you know, during the current year we reduced the book values of banking premises by \$2,000,000 in accordance with the above-mentioned agreement. This has been in addition to normal depreciation. We are also prepared fully to carry out the provisions of the agreement. Manifestly it is not unreasonable to expect that your Examination Report would take cognizance of the provisions of the agree-

ment approved by the Comptroller of the Currency.  
Cordially yours,

R. G. SMITH,  
Executive Vice President.

Copies to : Mr. W. P. Folger,  
Chief National Bank Examiner,  
Room 230½,  
Treasury Building,  
Office of the Comptroller of the Currency,  
Washington, D. C.  
Mr. Irwin D. Wright,  
Chief National Bank Examiner,  
1 Montgomery St., Room 925,  
San Francisco, Calif.

Admitted November 7, 1949.

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JOINT EXHIBIT 5-E

March 20, 1942

Mr. Irwin D. Wright,  
Chief National Bank Examiner,  
#1 Montgomery Street, Room #921,  
San Francisco, California.

Dear Mr. Wright:

This is in further reference to our exchange of correspondence in June of last year, particularly your letter of June 16, 1941, and our response of June 17, 1941. This correspondence related to the adjustment of the book values of certain of our

banking premises and our agreement to reduce book costs by an aggregate of \$4,000,000.

As explained to you the other day, the Bureau of Internal Revenue has made an examination of the Bank's tax returns and depreciation schedules for the years 1936 to 1940, inclusive, and has revised the Bank's depreciation schedules as claimed on tax returns. After the revenue agent's adjustments are made the cost, less depreciation, on the books of the Bank, as of December 31, 1940, will be approximately \$413,000, in excess of the cost, less depreciation, on the tax returns.

We now propose to reduce the book value of banking premises so that the depreciated cost as appearing on our books will be the same as the tax return schedules. When the 1940 figures are adjusted to December 31, 1941, the total amount of adjustment will result in a reduction in book values of approximately \$350,000.

This will also confirm our proposal to effect a reduction of the cost of our new Head Office Building at 300 Montgomery Street. As explained to you the construction costs have now been paid and the investment will now be set up in the proper accounts of building, furniture, fixtures and safe deposit equipment. In setting up these costs, we propose to write off a substantial portion of the building cost by a charge to expense.

We should appreciate it if you would confirm our understanding that the above adjustments will be regarded as a further compliance with the Requirements of the Comptroller, with respect to the carrying value of bank premises and that such adjust-

ments may be charged to the balance of Unallocated Reserve or Undivided Profits as we may elect.

Yours very truly,

R. G. SMITH,

Executive Vice President.

Admitted November 7, 1949.

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JOINT EXHIBIT 6-F

Treasury Department

Comptroller of the Currency

April 11, 1942.

Mr. R. G. Smith,  
Executive Vice President,  
Bank of America N. T. & S. A.,  
300 Montgomery Street,  
San Francisco, California.

Dear Mr. Smith:

This is in response to your letter dated March 20, 1942, asking approval of certain contemplated adjustments in the book values of banking houses as constituting further partial compliance with the requirement that book value of your banking premises be reduced by \$4,000,000.

We have never conceded, and do not now concede, that this department is any anywise bound by the principles followed by the Internal Revenue Department. On the contrary, it seems to me that the desires of the two departments are unavoidably in direct opposition. Nonetheless, reduction of the book

value of certain of your buildings to bring them into line with cost-less-depreciation figures of lower amount established by the Internal Revenue Department, appears to be an entirely worthy undertaking; the sum of approximately \$350,000. charged off for this purpose is accordingly approved as applying toward satisfaction of the Comptroller's requirements.

With regard to the adjustment which you contemplate making in the book value of your new Head Office building, I am unable to make a commitment without qualification. There were undoubtedly a number of sizable disbursements made in connection with this project which in my opinion should not be capitalized, for the reason that they represented neither actual cost of new construction nor tangible addition to value of the old portion of the building. Assuming that no such disbursements have been capitalized, then any charge-offs made against book value would be allowable. On the other hand, I cannot approve, as partial compliance with requirements, charge-offs whose effect is merely to eliminate items which never (in my opinion, unaffected by Internal Revenue rules) should have been capitalized.

In this connection, a simple method of circumventing debate occurs to me. A reduction of \$1,000,000.00 in the book value of the land upon which your Head Office is located would be entirely acceptable to me, and would eliminate from the current discussion the

question of the propriety of capitalizing expenses of the nature described above.

Very truly yours,

/s/ IRWIN D. WRIGHT,  
Chief National Bank Examiner, Twelfth Federal  
Reserve District.

IDW:A

Admitted November 7, 1949.

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#### JOINT EXHIBIT 7-G

This Indenture of Lease, dated this first day of August, 1936, by and between Merchants National Realty Corporation, herein called the Lessor, and Bank of America National Trust and Savings Association, a national banking association, with its office and principal place of business in the City and County of San Francisco, State of California, herein called the Lessee,

Witnesseth:

The Lessor leases, demises and rents to the Lessee, and the Lessee takes and hires of and from the Lessor, all those certain parcels of real property situate, lying and being in the State of California, and more particularly hereinafter described, all of which said parcels are now being used by the Lessee as its banking premises at the locations hereinafter designated. The said parcels are more particularly described as follows, to wit:

## (Description of properties.)

To Have and to Hold the above-described premises, with the rights, privileges, easements and appurtenances thereunto belonging and appertaining, for a period of ten (10) years, commencing on the first day of August, 1936, and ending at midnight on the 31st day of July, 1946, the Lessee yielding and paying the rental therefor and observing the obligations hereof on the Lessee's part to be kept and performed as hereinafter provided.

First: Rental. The Lessee, in consideration of the leasing of said premises as aforesaid, does hereby covenant and agree to pay the Lessor as rent for said property an amount equal to the total of all expenses and charges of the Lessor, which are allowable to the Lessor, Merchants National Realty Corporation, as deductions from gross income for Federal income tax purposes, less an amount equal to the total income of the Lessor derived from all sources other than the rental to be paid hereunder.

Second: Accrual and Payment of Rent. The rental payable under this lease shall be payable monthly on the first day of each and every month. Ten (10) days before the first day of January of each year, the Lessor shall make an estimate of the total amount of the deductions allowable to Merchants National Realty Corporation as deductions from gross income for Federal income tax purposes for the ensuing year. There shall then be deducted from said estimated amount an amount equal to the total income of the Lessor derived

from all sources other than the rental to be paid hereunder, and the monthly rent payable during said year shall be one-twelfth (1/12th) of the amount so remaining after said deduction. Said amount shall be paid monthly as rental during said year unless, during said year, the Lessor recomputes and re-estimates in like manner the amount of rental payable hereunder and notifies the said Lessee that the estimate has been changed, and after such notice the rent payable for subsequent months shall be based upon said revised computation, due allowance being made for the amount of rental theretofore paid. Within thirty (30) days after the end of each year, the Lessor shall determine from its records the amount of deductions allowable to Merchants National Realty Corporation as deductions from gross income for Federal income tax purposes, and after deducting therefrom an amount equal to the total income of the said Lessor derived from all sources other than the rental received hereunder, shall notify the said Lessee of the amount thereof, and the rental paid by the Lessee during the previous year shall be adjusted to conform to said determined amount, by the additional payment by the Lessee, to the Lessor, or by refund from the Lessor to the Lessee, as the case may be.

Third: Use of the Premises. Lessee agrees that it will not use or suffer to be used, the demised premises or any part thereof, in violation of the laws of the United States or of the State of California, or of the ordinances of any municipal or

other political subdivision in which the leased premises are situated, or the lawful orders or regulations of any governmental authority. Lessee further agrees that it will at all times keep and maintain the demised premises in like good order and condition as when received, ordinary wear and tear excepted; provided that the Lessee shall not be required to restore the said premises or any part thereof in case of such damage or destruction by fire or other cause as may render the same untenable, but under such circumstances the Lessee shall not be relieved from its obligation to pay the rent reserved hereunder. The Lessee shall pay promptly, and prior to delinquency, all charges, rates and assessments for gas, water, electricity, heat, power, telephone and any and all other utility services rendered to it in connection with its use or occupancy of the demised premises.

**Fourth: Liability.** The Lessee further covenants and agrees that the Lessor shall not at any time or to any extent be liable or responsible for, and that the Lessee shall and will forever indemnify and hold harmless the said Lessor from and against any and all liability and/or claims of liability on account of any injury or death of any person or persons, and on account of any loss or damage to the property in, on or about the demised premises or any portion thereof for which the Lessor as owner or otherwise, may be held liable during the term of this lease.

**Fifth: Inspection of Premises.** The Lessor may at any and all reasonable times enter upon the

demised premises for the purpose of inspecting the same, or of doing any work or repair or alteration or construction thereon, or of posting any notice or notices of non-responsibility, but the Lessor does not, by the execution hereof or otherwise, assume any obligation to make any repairs of any character, except that in the event the said premises, or any of them, shall be totally or partially destroyed or damaged by fire, earthquake or any other casualty against which the Lessor carries insurance, or is self-incurred by setting up reserves, then and in that event the said Lessor shall, with due diligence, repair the damage done or rebuild the premises, as the case may be.

Sixth: Default. Time is of the essence of this indenture of lease. In the case the Lessee shall make default in the payment of any installment or rent or of any other sum herein required to be paid by it, or in the observance or performance of any condition or covenant by it to be observed or performed, and such default shall continue for a period of thirty (30) days after written notice from the Lessor to make such payment or to observe or perform such condition or covenant, then the Lessor may, without further notice, terminate this lease and declare the same of no further force and effect, reenter upon said premises and remove the Lessee and all persons holding under it therefrom, using all necessary force so to do, and relet the said premises or any part thereof at such rental and upon such conditions as it may deem proper, applying the proceeds thereof, less expenses actually incurred, upon the amount due from the Lessee

hereunder, the Lessee being liable for any deficiency.

Seventh: Attorney Fees. In case any action be brought by the Lessor to enforce this lease or any provision hereof, the Lessee agrees to pay the reasonable attorney fees incurred by the Lessor in such action, the amount thereof to be fixed by the court.

Eighth: Waiver. No delay or omission of the Lessor to exercise any right or power or to take any action arising from any default on the part of the Lessee hereunder, shall be construed to be a waiver of any such default or an acquiescence therein. In case the Lessor shall have proceeded to enforce any right afforded to it by the terms hereof, and such proceedings have been discontinued or abandoned or waived, or have been determined adversely to the Lessor, then and in each such case the Lessor shall be restored to its former position and rights hereunder, and all its obligations, remedies, rights and powers shall continue as though no such proceedings had been taken.

Ninth: Condition of Property. The Lessor has examined and knows the condition of the premises hereby leased, and every part thereof, and it hereby acknowledges that said premises are in good condition and repair.

Tenth: Additions, Eliminations and Substitutions. It is agreed that from time to time the Lessor and the Lessee may add to the parcels of property covered by this lease, by agreeing that the same shall become a part of the property covered hereby.

When any such parcel is added, as herein provided, it shall become subject to all the terms and conditions of this lease, to the same extent as though it had been originally described herein. With like effect, and in the same manner, parcels now subject to this lease may be eliminated herefrom and in like manner and with like effect other parcels of property may be substituted for the parcels either now subject or hereafter to become subject to the terms of this lease.

Eleventh: Successors. This indenture of lease shall bind and inure to the benefit of the successors and assigns of the Lessor and the Lessee.

In Witness Whereof, the parties hereto have caused their corporate names to be hereunto subscribed and their corporate seals to be affixed hereto, by their proper officers thereunto duly authorized, the day and year first hereinabove written.

[Seal]

MERCHANTS NATIONAL  
REALTY CORPORATION,  
By A. S. SEARBORO,

President.

R. P. A. EVERARD,  
Secretary.

BANK OF AMERICA  
NATIONAL TRUST AND  
SAVINGS ASSOCIATION,

By R. G. SMITH,  
Vice President.  
A. W. TWOMEY,  
Ass't Sect.

Admitted November 7, 1949.

## JOINT EXHIBIT 8-H

Bank of America N.T. and S.A.  
Property Deeded by Bank to Capital Co. & by Capital Co. to M.N.R. Corp.

Years 1941 and 1943

Property	Cost	Reserve for Depreciation	Net Cost	Check Received by Bank From Capital Co.	Revenue	Books and Stamps	Tax Return	Loss Shown on Bank's Books	Date of Execution and Delivery of Deed	Date of Execution and Del. of Deed Cap. Co. to Merchants
Year 1941										
Petaluma .....	\$ 174,619.48	\$ 16,408.78	\$ 158,210.70	\$ 95,648.00	\$ 105.60	\$ 62,668.00		4- 9-41	6-21-41	
Vallejo Com'l .....	72,140.00	3,077.09	69,062.91	55,240.00	61.05	13,883.96		4- 9-41	6-21-41	
Mountain View .....	73,170.60	19,911.32	53,259.28	30,957.00	34.10	22,336.38		4- 9-41	6-21-41	
Stockton M. O. ....	1,429,780.65	316,155.90	1,113,624.75	710,596.00	782.10	403,810.85		4- 9-41	6- 3-41	
Atwater .....	30,514.50	7,310.59	23,203.91	17,484.00	19.25	5,739.16		4- 9-41	6-21-41	
Glen Park .....	16,216.41	1,938.04	14,278.37	7,975.00	8.80	6,312.17		4- 9-41	6-21-41	
29th & Mission .....	95,068.31	7,917.03	87,151.28	64,393.00	70.95	22,829.23		4- 9-41	6-21-41	
8th & Vermont .....	177,775.80	14,728.49	133,047.31	60,795.00	.....	72,252.31		4- 9-41	6-21-41	
Seventh & Westlake .....	230,695.96	59,991.93	170,704.03	42,356.00	.....	128,348.03		4- 9-41	6-21-41	
Market-New Montg. ....	1,510,505.52	271,821.08	1,238,684.43	822,437.88	905.30	416,745.95		4-19-41	11- 1-41	
Hynes .....	25,917.65	1,486.67	24,430.98	14,218.00	15.95	10,228.93		4- 9-41	6-21-41	
Melrose (Oakland) .....	66,597.39	11,003.46	55,598.93	37,419.00	41.25	18,216.18		4- 9-41	6-21-41	
Elmhurst .....	61,859.65	7,965.85	53,893.80	39,496.00	43.45	14,441.25		4- 9-41	6-21-41	
Broadway Grand .....	534,000.40	82,772.88	451,227.52	344,989.64	379.50	106,617.38		9-19-41	11- 1-41	
8th & Broadway .....	82,798.91	5,391.43	77,407.48	30,602.00	34.10	46,839.58		4- 9-41	6-21-41	
10th & Pacific .....	96,456.78	3,686.45	92,770.33	61,068.00	67.65	31,769.98		4- 9-41	6-21-41	
Total 1941 .....	\$4,678,118.01	\$861,567.00	\$3,816,551.01	\$2,436,080.42	\$2,569.05	\$1,383,036.64				
Year 1943										
Palo Alto .....	\$ 200,575.94	\$ 41,441.37	\$ 159,134.57	\$ 107,778.76	\$ 118.80	\$ 51,464.61		5- 7-43	6- 8-43	
Fall Brook .....	10,561.60	1,329.30	9,232.30	7,377.09	8.25	1,763.46		5- 7-43	6- 8-43	
Sacramento Main .....	1,505,512.78	445,475.18	1,059,837.65	971,262.59	1,068.65	89,643.71		6-30-43	7-29-43	
Santa Maria .....	72,230.47	13,885.67	58,344.89	52,019.79	57.75	6,382.76		5- 7-43	6- 8-43	
Oakland Main .....	2,076,584.34	378,437.66	1,698,398.78	1,441,888.17	1,586.20	258,094.81		6-30-43	7-29-43	
38th & Balboa .....	43,075.90	9,418.15	33,657.35	30,554.28	34.10	3,137.17		5- 7-43	6- 8-43	
23rd .....	278,556.23	21,434.71	257,121.52	208,821.54	299.90	48,529.88		3-31-43	4-30-43	
74th & McArthur .....	45,047.70	5,642.65	39,405.05	33,647.17	37.40	5,795.28		5- 7-43	6- 8-43	
Total 1943 .....	\$4,232,195.06	\$917,065.04	\$3,315,130.02	\$2,853,459.39	\$3,141.05	\$464,811.68				

Admitted November 7, 1949.

## JOINT EXHIBIT 9-I

Merchants National Realty Corporation  
Property Deeded by Merchants to Capital Co. & by Capital Co. to Bank of America

Years 1941 and 1942

Property	Cost	Reserve for Depreciation	Net Cost	Check Received by Merchants From Capital Co.	Revenue	Books and Stamps	Tax Return	Loss Shown on Merchant's Books	Date of Execution and Delivery of Deed	Date of Execution and Del. of Deed Cap. Co. to B. of A.
Year 1941										
American Ave. ....	\$ 484,172.83	\$ 21,894.58	\$ 462,277.85	\$163,882.20	\$180.40	\$295,576.05		9-15-41	11- 1-41	
Atlantic Whittier .....	271,994.26	36,904.55	235,089.71	184,959.36	203.50	50,697.85		9-15-41	11- 1-41	
Torrance .....	103,108.22	11,902.88	91,205.34	43,946.40	48.40	47,307.34		9-15-41	11- 1-41	
Western Santa Monica .....	288,445.21	24,672.70	263,772.51	157,153.03	173.25	106,792.73		9-15-41	11- 1-41	
Total 1941 .....	\$1,147,720.52	\$ 95,375.11	\$1,052,345.41	\$549,576.99	\$605.55	\$503,373.97				
Year 1942										
Chula Vista .....	\$ 49,054.92	\$ 22,525.25	\$ 26,229.67	\$ 13,506.74	\$ 15.40	\$ 12,738.33		11- 2-42	12- 3-42	
Colorado-Mentor .....	113,665.27	15,614.49	100,023.78	50,572.79	56.10	45,367.09		3- 2-42	5- 1-42	
Compton .....	128,172.92	17,824.31	110,348.61	73,337.17	80.85	31,092.29		12- 2-42	12- 3-42	
Estado-Cota .....	101,400.90	18,412.66	82,988.24	48,050.05	53.35	34,991.54		11- 2-42	12- 3-42	
Fullerton .....	205,013.45	30,429.18	174,584.27	88,643.54	97.90	86,638.63		11- 2-42	12- 3-42	
Hillcrest .....	75,147.98	20,674.22	54,473.76	31,635.16	35.20	22,873.80		11- 2-42	12- 3-42	
Lancaster .....	54,455.86	16,639.33	37,816.53	15,577.98	17.60	21,956.15		11- 2-42	12- 3-42	
Melrose-La Brea .....	151,956.88	18,859.94	133,096.94	70,091.23	77.55	63,083.26		11- 2-42	12- 3-42	
Seventh & Hoover .....	193,983.25	42,371.68	151,611.57	42,478.10	46.75	109,180.22		3- 2-42	5- 1-42	
Wilmington .....	75,248.23	15,739.30	59,508.93	27,406.64	30.25	32,132.54		11- 2-42	12- 3-42	
Total 1942 .....	\$1,142,099.66	\$217,417.36	\$924,682.30	\$461,599.40	\$510.95	\$463,593.85				

Admitted November 7, 1949.



## JOINT EXHIBIT 10-J

This Indenture of Lease, made and entered into this Seventh day of May, 1943, by and between Capital Company, a corporation, organized and existing under the laws of the State of California, hereinafter called the Lessor, and Bank of America National Trust and Savings Association, a national banking association, hereinafter called the Lessee,

Witnesseth:

That Lessor leases, demises and rents to the lessee and the lessee takes and hires of and from the lessor all that certain parcel of real property situate, lying and being in the City of Oakland, County of Alameda, State of California, and more particularly described as follows:

Lots Numbered Six (6), Seven (7) and Eight (8) in Block Numbered Seventeen (17), as said Lots and Block are laid down, delineated and so designated upon that certain map entitled, "Electric Loop Tract, Oakland, Alameda County, California 1914," and filed in the office of the County Recorder of said County of Alameda, on the 15th day of April, 1914, in Map Book 28, at pages 65 and 66 thereof, together with the improvements thereon.

This lease is subject to existing leases and tenancies covering portions of the above-referred-to improvements hereby demised, of which leases the lessee admits full knowledge, and the lessor does

hereby assign unto the lessee all of the right, title and interest of the lessor in and to said leases or any of them and all rentals to accrue thereunder, and any cash deposit or deposits given to secure the performance of any of said leases, and the lessee agrees that it will for and throughout the full term of this lease fulfill and perform all covenants, promises and undertakings on the part of the lessor in said leases and any of them contained, and hold the lessor herein safe and harmless from any and all liability to the lessees, all or any of them in said leases named and their respective successors and assigns by reason of any default in the performance by the lessee herein of the covenants, promises and undertakings on the part of the lessor, or its successor in interest, in any of said leases contained.

To Have and to Hold the above-described premises with the rights, privileges, easements and appurtenances thereunto belonging and appertaining, for a period of one year, commencing on 7th day of May, 1943, and ending on the 6th day of May, 1944, the lessee yielding and paying the rental therefor and reserving the obligations hereof on the lessee's part to be kept and performed as hereinafter provided.

First: Rental. The lessee, in consideration of the leasing of said premises as aforesaid, does hereby covenant and agree to pay as rental for the use and occupancy of the said premises the sum of \$2,018.83 in equal installments of \$168.24,

payable monthly in advance, commencing with the first day of the term hereof.

Second: Use of the premises. Lessee agrees that it will not use or suffer to be used, the demised premises or any part thereof, in violation of the laws of the United States of America, or of the State of California, or of the ordinances of any municipal or other political subdivision in which the leased premises are situated, or the lawful orders or regulations of any governmental authority. Lessee further agrees that it will at all times keep and maintain the demised premises in like good order and condition as when received, ordinary wear and tear excepted; provided that the lessee shall not be required to restore the said premises or any part thereof in case of such damage or destruction by fire or other cause as may render the same untenantable, but under such circumstances, the lessee shall not be relieved from its obligation to pay the rent reserved hereunder. The lessee shall pay promptly, and prior to delinquency, all charges, rates and assessments for gas, water, electricity, heat, power, telephone and any and all other utility services rendered to it in connection with its use or occupancy of the demised premises.

Third: Liability. The lessee further covenants and agrees that the lessor shall not at any time or to any extent be liable or responsible for, and that the lessee shall and will forever indemnify and hold harmless the said lessor from and against any and all liability and/or claims of liability on account of any injury or death of any person or persons,

and on account of any loss or damage to property in, on or about the demised premises or any portion thereof for which the lessor, as owner or otherwise, may be held liable during the term of this lease.

Fourth: Inspection of Premises. The lessor may at any and all reasonable times enter upon the demised premises for the purpose of inspecting the same, or of doing any work or repair or alteration or construction thereon, or of posting any notice or notices of non-responsibility, but the lessor does not, by the execution hereof or otherwise, assume any obligation to make any repairs of any character, except that in the event the said premises, or any of them, shall be totally or partially damaged or destroyed by fire, earthquake or other casualty against which the lessor carries insurance, or is self-insured by setting up reserves, then and in that event the said lessor shall, with due diligence repair the damage done or rebuild the premises, as the case may be.

Fifth: Default. Time is of the essence of this indenture of lease. In case the lessee shall make default in the payment of any installment of rent or of any other sum herein required to be paid by it, or in the observance or performance of any condition or covenant by it to be observed or performed, and such default shall continue for a period of thirty (30) days after written notice from the lessor to make such payment or to observe or perform such condition or covenant, then the lessor may, without further notice, terminate this

lease and declare same of no further force and effect, reenter upon said premises and remove the lessee and all persons holding under it therefrom, using all necessary force so to do, and relet the said premises or any part thereof at such rental and upon such conditions as it may deem proper, applying the proceeds thereof, less expenses actually incurred, upon the amount due from the lessee hereunder, the lessee being liable for any deficiency.

Sixth: Attorney Fees. In case any action be brought by the lessor to enforce this lease or any provision hereof, the lessee agrees to pay the reasonable attorney fees incurred by the lessor in such action, the amount thereof to be fixed by the court.

Seventh: Waiver. No delay or omission of the lessor to exercise any right or power or to take any action arising from any default on the part of the lessee hereunder, shall be construed to be a waiver of any such default or an acquiescence therein. In case the lessor shall have proceeded to enforce any right afforded to it by the terms hereof, and such proceedings have been discontinued or abandoned or waived, or have been determined adversely to the lessor, then and in each such case, the lessor shall be restored to its former position and rights hereunder, and all its obligations, remedies, rights and powers shall continue as though no such proceedings had been taken.

Eighth: Condition of Property. The lessee has examined and knows the condition of the premises

hereby leased, and every part thereof, and it hereby acknowledges that said premises are in good condition and repair.

Ninth: Taxes, Assessments and Fire Insurance. The taxes and assessments levied against the demised premises have been paid through June 30, 1943, and as additional consideration for the lessor entering into this lease, the lessee agrees to pay all taxes and assessments of any kind or nature levied against the demised premises during the term hereof, commencing with the 1st instalment levied for the fiscal year 1943-44 prior to the delinquency date.

In addition to the lessee's obligation to repair as set forth in paragraph Second hereof, the lessee agrees to make any and all repairs to the demised premises that may become necessary by reason of fire damage, earthquake or other casualty.

Tenth: Personal Property Taxes. The lessee shall be liable for all taxes levied against personal property and trade fixtures placed by lessee in, on or about the herein demised premises, including but without prejudice to the generality of the foregoing, shelves, counters, vaults, vault doors, wall safes, partitions, fixtures, machinery, printing presses, plant equipment and atmospheric coolers, and if any such taxes on lessee's personal property or trade fixtures are levied against the lessor or lessor's property, and if lessor pays the same, which lessor shall have the right to do, regardless of the validity of such levy, or if the assessed value

of the lessor's premises is increased by the inclusion therein of a value placed on such property of lessee, and if lessor pays the taxes based on such increased assessment, which the lessor shall have the right to do, regardless of the validity thereof, lessee upon demand, shall, as the case may be, repay to lessor the taxes so levied against lessor, or the proportion of such taxes resulting from such increase in the assessment.

Eleventh: Successors. This indenture of lease shall bind and inure to the benefit of the successors and assigns of the lessor and the lessee.

In Witness Whereof, the parties hereto have caused their corporate names to be hereunto subscribed and their corporate seals to be affixed hereto by their respective officers thereunto duly authorized, the day and year hereinabove first written.

CAPITAL COMPANY,

By /s/ HARRY McCLELLAN,  
Vice President.

By /s/ [Indistinguishable]  
Secretary.

BANK OF AMERICA  
NATIONAL TRUST AND  
SAVINGS ASSOCIATION,

By /s/ J. RAGGIO,  
Vice-President.

By /s/ R. J. VON DER MEHDEN,  
Assistant Secretary.

JOINT EXHIBIT 11-K

At a duly constituted meeting of the Board of Directors of Capital Company, held on November 13, 1941, the following resolution was adopted:

Resolved, that the actions of the officers of this Corporation in purchasing various properties from Bank of America National Trust and Savings Association and Merchants Realty Corporation, and thereafter selling such properties to Merchants National Realty Corporation or the Bank of America National Trust and Savings Association for a sum equal to the actual purchase price are hereby ratified and confirmed.

I, the undersigned Secretary of Capital Company, a California corporation, certify and declare that the foregoing is a full, true and correct copy of a resolution passed and adopted by the Board of Directors of said corporation at a Meeting thereof held on the thirteenth day of November, 1941, pursuant to the By-laws, at which meeting a quorum was present and voted in favor of said Resolution; that said resolution has not been rescinded or amended and that the same is still in full force and effect.

In Witness Whereof, I have hereunto set my hand  
and affixed the corporate seal of said corporation on  
the 12th day of July, 1949.

[Seal] /s/ [Indistinguishable],  
Secretary of Capital Company.

Admitted November 7, 1949.

## JOINT EXHIBIT 12-L

At a duly constituted meeting of the Board of Directors of Capital Company, held on April 16, 1942, the following resolution was adopted:

Resolved, that the action of the officers of this Corporation heretofore performed in purchasing the Premises known as the Seventh and Hoover Branch Premises of the Bank of America National Trust and Savings Association and the Colorado-Mentor Branch Premises of the Bank of America National Trust and Savings Association in the Cities of Los Angeles and Pasadena, respectively, State of California, is hereby ratified, approved and confirmed.

I, the undersigned Secretary of Capital Company, a California corporation, hereby certify and declare that the foregoing is a full, true and correct copy of a resolution duly passed and adopted by the Board of Directors of said corporation at a Meeting thereof held on the sixteenth day of April, 1942, pursuant to the By-laws, at which meeting a quorum was present and voted in favor of said Resolution; that said resolution has not been rescinded or amended and that the same is still in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of said corporation on this 12th day of July, 1949.

[Seal] /s/ [Indistinguishable],  
Secretary of Capital Company.

Admitted November 7, 1949.

**JOINT EXHIBIT 13-M**

At a duly constituted meeting of the Board of Directors of the Capital Company, held on December 10, 1942, the following resolution was adopted:

Be It Resolved, that the action of the Officers of this Corporation in purchasing eight properties from Merchants National Realty Corporation for the sum of \$368,548.51 on November 2, 1942, and thereafter selling said properties for the same sum to Bank of America National Trust and Savings Association on December 3, 1942, be and it is hereby ratified and approved.

I, the undersigned Secretary of Capital Company, a California corporation, hereby certify and declare that the foregoing is a full, true and correct copy of a resolution duly passed and adopted by the Board of Directors of said Corporation at a Meeting thereof held on the tenth day of December, 1942, pursuant to the By-laws, at which meeting a quorum was present and voted in favor of said Resolution; that said resolution has not been rescinded or amended and that the same is still in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of said corporation on this 12th day of July, 1949.

[Seal] /s/ [Indistinguishable],  
Secretary of Capital Company.

Admitted November 7, 1949.

## JOINT EXHIBIT 14-N

Copy

January 10, 1941

Memorandum

Re: Banking Premises

In the last few years the Bank of America N. T. & S. A. and the Comptroller of the Currency have been engaged in a controversy concerning a number of items involving the bank. One of these items was the amount at which banking premises were carried on the books of the bank. The Comptroller of the Currency advances certain contentions that the book values were excessive and did not reflect present market values of certain of the properties. The Bank has consistently contended that it should have the right to carry its banking premises on its books as assets at the cost of acquisition, less ordinary depreciation due to wear and tear. The Bank also contended that even on the basis of market values, its book values were not excessive. In order to establish this latter point, the Bank employed the American Appraisal Company who appraised all of the properties. After that a certain agreement was reached whereby a Committee was appointed to arrive at some determination with respect to the controversy concerning banking premises. The Committee and the Bank might reach an agreement whereby the Bank is to reduce the carrying value of its banking premises by a certain amount. I believe the amount might be \$2,000,000, or perhaps \$3,000,000.

The Bank called me into the matter, explaining to me the controversy and asked me to advise them of a method by which they could comply with this

accord without receding from their position that they should be entitled to carry their properties at cost.

I advised them that they could probably arrange to purchase and sell properties between the Bank and Merchants National Realty Corporation, so that the purchase price of the respective properties would be a figure satisfactory to the Committee and in accordance with the agreement. The Bank officers felt that since it was a transaction between the parent and a wholly owned affiliate, the purchase and sale transaction might be ignored and the transaction considered a write-down which would establish a precedent whereby the Bank might be compelled to continue the practice of arbitrarily writing down its banking premises. The Bank, of course, did not wish to establish a precedent or to be in a position where it could ever be faced with the contention it had previously recognized the legality of any requirement by the Comptroller of Currency that banking premises should be arbitrarily written down.

I then suggested that if the Bank and Merchants National Realty Corporation should be willing to assume the risks which might result where property is removed from their hands even for a short period of time, they might arrange with some other company, such as Capital Company, to purchase the property from one and then sell to the other. Capital Company may do this as an accommodation since they have had considerable dealings with the Bank, but it would seem they might and would probably be justified in being compensated for the work involved

in the transfers of the property. Such an arrangement would avoid the element of direct transactions between affiliated companies, at least in form, even though the effect might be the same. Of course, the element of risk in transactions such as this, would be a distinction as against direct transactions between the affiliated companies.

The officers of the Bank inquired as to the results of such transactions for tax purposes and especially whether there was anything wrong in transactions such as this. I told them there is nothing in the tax law which prohibits business transactions having a definite purpose, just so long as those transactions are not used for the purpose of defrauding the Government of taxes. I also advised them that there was nothing in the taxing statutes which prohibits sales between a parent and its subsidiary or which prohibits the deduction of a loss resulting from those sales, provided the transactions were made at fair market prices, so that even if the transactions were directly between the two companies, any loss might be allowable. However, I pointed out that the disadvantage of this would be that the Bank would have lower depreciation deductions in later years, and that this would undoubtedly result in loss in tax because of increasing tax rates.

I was in doubt as to whether the Government would recognize the Capital Company as a party to the transactions because although the effect of the transactions ultimately was a transaction between affiliated companies, nevertheless Capital Company did enter into the transaction, did take title to the

property and did convey, and should be considered as part of the transaction. I am positive that if in this transaction with respect to any of the properties, a gain resulted from the sale by the Bank to Capital Company, even though later the property was resold by Capital Company to Merchants National Realty Corporation, the gain would be subject to tax. In fact, I have cases in my office where gains on sales of property between affiliated companies within the past few years have been subjected to tax.

The Bank officers have asked me that I should instruct them as to the method of carrying out these transactions for the purposes indicated, and that I should be careful that the transactions should be properly disclosed so that there could be no misunderstanding of the transactions, or so that there could be no complaint on the part of the tax authorities that these transactions were made for the purpose of defrauding the Government or were not properly disclosed. I advised them that in my opinion the handling of the transactions with an outside company would be preferable for the purposes to be accomplished and that I would see to it that the tax returns and tax files would contain the proper disclosures so that the Government would be fully informed about the transactions.

GEORGE H. KOSTER.

January 10, 1941

L.M.G. discussed this matter fully with Mr. Folger, office of Comptroller of Currency, in Washington, D. C., February, 1941.

L.M. and I discussed the matter (tax effects as well as purposes of the transactions) with Mr. Wright, Chief National Bank Examiner, San Francisco, in Washington in March, 1941, who told us that his office could not pass upon the tax effect of the transactions because that would have to be considered by the Bureau of Internal Revenue, and any acceptance by his office of the form of the transactions could not be considered a conclusion, one way or the other, on any tax problems involved in the transactions.

G.H.K.

Admitted November 7, 1949.

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### JOINT EXHIBIT 15-O

#### Merchants National Realty Corporation List of Directors and Officers

1943

##### Directors

W. E. Blauer	Wm. H. Harrelson
Leon Bocqueraz	A. E. Sbarboro
F. A. Ferroggiaro	R. G. Smith
L. M. Giannini	

## Officers

Chairman of the Board . . . . .	Leon Bocqueraz
President . . . . .	R. G. Smith
Vice-Presidents . . . . .	Marsden S. Blois W. J. Braunschweiger W. G. Cuppa F. A. Ferroggiaro J. Raggio C. C. Robinson J. H. Rosenberg
Treasurer . . . . .	R. P. A. Everard
Secretary . . . . .	Hugo A. Steinmeyer
Assistant Secretaries . . . . .	T. G. Dempsey John Falconer, Jr. J. M. Fischer Edward F. Mulrooney I. E. Sage R. J. von der Mehden H. A. Wagstaffe

Admitted November 7, 1949.

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## JOINT EXHIBIT 16-P

Bank of America N. T. & S. A.

List of Directors and Administrative Officers  
1943

## Administrative Officers

A. P. Giannini, Chairman of the Board of Directors
L. M. Giannini (Son of A. P. Giannini), President— Chairman of the General Executive Committee
W. E. Blauer, Vice Chairman of the Board of Directors—Chairman of the General Finance Committee

A. J. Gock, Vice Chairman of the Board of Directors  
F. S. Baer, Vice Chairman of the Board of Directors  
C. F. Wente, Senior Vice President  
F. A. Ferroggiaro, Executive Vice President—Vice Chairman of the General Finance Committee  
R. G. Smith, Executive Vice President  
Louis Ferrari, Vice President and Counsel  
L. E. Birdzell, Vice President and Senior Trust Officer  
W. J. Braunschweiger, Vice President—Chairman of the Public Relations Committee  
A. Fenton, Vice President and Chairman of the Operating Committee  
R. P. A. Everard, Vice President and Cashier  
Otto Jeidels, Vice President—Vice Chairman of the General Finance Committee  
J. A. Purdy, Vice President and Vice Chairman of the Operating Committee  
Hugo A. Steinmeyer, Secretary

Directors

F. S. Baer	C. N. Hawkins
W. E. Blauer	John E. Marble
Leon Bocqueraz	H. A. Mazzera
Dr. G. E. Cagliari	Wm. Wallace Mein
Jos. Cereghino	Neil Petree
John A. Corotto	Angelo Petri
F. A. Ferroggiaro	Dr. Celestine J. Sullivan
A. J. Gock	E. R. Thurber
A. P. Giannini	C. F. Wente
L. M. Giannini	J. Zentner
Marshal Hale	

The Court: Now you may offer your other exhibits separately.

The Clerk: Do you have another copy of the stipulation?

Mr. Koster: I will send it to you. I don't have it with me.

The Court: Will you send it down here while we are in session?

Mr. Koster: Yes.

The Court: You don't have to bring it yourself. Just have someone from your office bring it down.

Mr. Koster: Yes. Mr. Kohlmeier has a case here and I may come down and listen to the trial then and bring it down. [23]

At this time I wish to introduce an exhibit in the case, Exhibit 17-Q.

The Court: Are these to be joint exhibits also?

Mr. Koster: These are all joint exhibits.

Mr. Crouter: That is correct.

The Court: Very well. So that these are agreed to by counsel and the clerk may simply mark them, is that correct?

Mr. Koster: That is correct.

The Court: Then if you will hand each exhibit to the Clerk, please, I will receive them. Just give me the numbers as you go along.

17-Q is received in evidence.

(Whereupon the document was marked for identification as Joint Exhibit 17-Q and was received in evidence.)

Mr. Koster: Exhibit 18-R.

The Court: 18-R is received in evidence.

(Whereupon the document was marked for identification as Joint Exhibit 18-R and was received in evidence.)

Mr. Koster: Exhibit 19-S.

The Court: 19-S is received in evidence.

(Whereupon the document was marked for identification as Joint Exhibit 19-S and was received in evidence.) [24]

Mr. Koster: Exhibit 20-T.

The Court: 20-T is received in evidence.

(Whereupon the document was marked for identification as Joint Exhibit 20-T and was received in evidence.)

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#### JOINT EXHIBIT 20-T

Copy

January 29, 1943

Memorandum for: Mr. F. A. Rees

National Bank Examiner  
No. 1 Montgomery Street  
San Francisco, California

The following reduction in the carrying value of bank premises was made in 1942:

In March, Merchants National Realty Corporation sold to Capitol Company Colorado-Mentor and Seventh & Hoover premises at their aggregate appraised value of \$93,050.89. The properties were carried by

Merchants National Realty Corporation at \$251,-635.35, and the sale resulted in a loss of \$158,584.46. The Bank reimbursed the Corporation for this loss, charging same to Administration Losses. Subsequently, the Bank acquired these properties from Capital Company at their appraised value of \$93,050.89, at which figure they are now carried on the Bank's books.

As of June 30th, the total investment in Banking Premises was carried on the Bank's books at \$448,-026.73, more than the net investment as reported on the schedule of such properties for income tax purposes. This difference was brought about through application during the past ten years of a greater amount of depreciation on the income tax schedule than that actually taken on the Bank's books. On June 30th, this difference of \$448,026.73 was credited to Bank Premises and charged to Unallocated Reserve, and the book value of each property reduced by the amount of difference to conform to the tax schedules.

As of October 20, Merchants National Realty Corporation's investment in Banking Premises was carried at \$36,883.97 more than the net investment in these properties as reported on their income tax schedule. This difference was brought about through the application during the past ten years of a greater amount of depreciation on the tax schedule than that actually taken on the Corporation's books. On October 20, the Corporation reduced the carrying value of these properties by the amount of this difference, using therefor funds paid to it by the Bank for this

purpose. This contribution of \$36,883.97 was charged to Administration Losses by the Bank.

On October 31, the sum of \$1,000,000 was credited to Bank Premises and charged to Administration Losses to write-down the carrying value of San Francisco Headquarters' Premises. This investment was written down as follows: Land value \$314,000. to a figure conforming with the appraisal of the American Appraisal Company, and Building Value \$686,000.

On November 30, Merchants National Realty Corporation sold a number of banking premises to Capital Company at their aggregate appraised value of \$368,548.51. These properties were carried by the Corporation at \$673,046.95, and their sale resulted in a loss of \$304,498.44. The Corporation was reimbursed for this loss and it was charged to Administration Losses on Bank's books. These properties were subsequently acquired by the Bank at their appraised value of \$368,548.51, and are now so carried.

Total amount of write-down of Banking Premises, in accordance with the above, during 1942 was \$1,948,503.55. This, with the adjustment made in 1941, brings the total adjustment of the banking premises made in accordance with the "Requirements of the Comptroller of the Currency" to \$4,003,995.32.

R. G. SMITH.

Admitted November 7, 1949.

Mr. Koster: Exhibit 21-U.

The Court: I guess you better tell us what 20-T is.

Mr. Koster: 20-T is a letter which makes reference to these transactions.

The Court: Letter from whom to whom?

Mr. Koster: Mr. R. G. Smith, Executive Vice President of the bank, to Mr. F. A. Reese, National Bank Examiner, dated January 29, 1943, which contains, among other things, some comments about the transactions involved in this proceeding.

The Court: Yes.

Mr. Koster: Then as Exhibit 21-U the income and excess profits tax return for the Bank of America for the year 1943, together with schedules that are a part of the return.

The Court: That is received in evidence as 21-U.

(Whereupon the document was marked for identification as Joint Exhibit 21-U and was received in evidence.)

For Calendar Year 1943

or fiscal year beginning January 1, 1943, and ending December 31, 1943

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

300 MONTGOMERY STREET

SAN FRANCISCO

(Street and number)

CALIFORNIA

(City or town)

Kind of business: BANK

(Type of business)

355

Business group serial number (from instruction N) 165

NORMAL-TAX NET INCOME COMPUTATION

Item and  
Instruction No.

GROSS INCOME

1. Gross sales (where inventories are an income-determining factor)	Less: Returns and allowances	\$	
2. Less: Cost of goods sold. (From Schedule A)			
3. Gross profit from sales		\$	
4. Gross receipts (where inventories are not an income-determining factor)		\$	
5. Less: Cost of operations. (From Schedule B)			
6. Gross profit where inventories are not an income-determining factor			
7. Interest on loans, notes, mortgages, bonds, bank deposits, etc.			37,664,020 97
8. Interest on corporation bonds, etc.		\$120,709 94	1,058,499 50
9. (a) Interest on United States savings bonds and Treasury bonds owned in excess of the principal amount of \$5,000 issued prior to March 1, 1941. (From Schedule M, line 5 (a) (7) above.)		10,389,635 54	8,247,942 45
(b) Interest on bonds and notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. (Submit schedule)		10,194,176 00	9,922,755 03
10. Rents			2,951,158 25
11. Royalties			
12. (a) Net gain from sale or exchange of capital assets. (From Schedule C)		603,792 36	
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)		19,898 26	
13. Dividends. (From Schedule E)			10,769 28
14. Other income. (State nature)			
15. Total income in items 3, and 6 to 14, inclusive			70,029,766 13

DEDUCTIONS

18. Compensation of officers. (From Schedule F)	\$	24,183,471 05
17. Salaries and wages (not deducted elsewhere)		1,554,827 96
18. Rent		785,223 36
19. Repairs		2,109,288 33
20. Bad debts. (From Schedule G)		9,471,702 92
21. Interest		7,160,268 27
22. Taxes. (From Schedule H) (Deduct declared value excess-profits tax as item 34)		266,794 90
23. Contributions or gifts paid. (From Schedule I)		1,355,618 18
24. Losses by fire, storm, shipwreck, or other casualty, or theft. (Submit schedule)		
25. Depreciation. (From Schedule J)		
26. Depletion of mines, oil and gas wells, timber, etc. (Submit schedule)		
27. Net operating loss deduction. (Submit statement)		
28. Amortization of emergency facilities. (Submit schedule)		
29. Other deductions authorized by law. (From Schedule K)		5,598,156 61
30. Total deductions in items 18 to 29, inclusive		52,185,351 58
31. Net income for declared value excess-profits tax computation (item 16 minus item 30)		47,844,414 55
32. Add: Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941. (From Schedule M, line 15 (a) (C) (ii))		595,966 55
33. Total of lines 31 and 32		48,439,380 10
34. Less: Declared value excess-profits tax		1,815 01
35. Net income		48,437,566 03
36. Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941. (Enter total of lines 9 (a) and 32)		8,943,909 00
37. Adjusted net income		8,929,657 03
38. Less: Income subject to excess profits tax. (From Form 1121)		
39. Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 37 minus item 38, above)		16,913 52
40. Normal-tax net income		16,913 52

TOTAL INCOME AND DECLARED VALUE EXCESS-PROFITS TAXES

41. Total income tax (line 28 or 29, page 2, whichever is applicable)	\$	8,5126,122 84
42. Less: Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation		
43. Balance of income tax		
44. Total declared value excess-profits tax (line 6, page 2)		
45. Total income and declared value excess-profits taxes due		8,5126,122 84

AFFIDAVIT. (See Instruction E)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, exact, and complete return, made in good faith for the tax year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

Subscribed and sworn to before me this 9th day of March 1944.

Notary Public in and for the City of San Francisco and County of San Francisco

STATE OF CALIFORNIA

CORPORATE SEAL

(President and Vice President, or Chief Accounting Officer)

TREASURER

(Treasurer, Assistant Treasurer, or Chief Accounting Officer)

I, the undersigned, have prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 9th day of March 1944.

(Signature of person preparing the return)

(Signature of person preparing the return)



ASSETS	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
1. Cash	\$	457,817,928.48	\$	591,413,681.48
2. Notes and accounts receivable:				
a. Loss: Reserve for bad debts		80,487,057.53		810,415,149.89
3. Inventories (itemize in separate schedule)				
4. Investments in governmental obligations:				
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, issued prior to March 1, 1941.		175,669,415.85		191,036,138.33
(b) Obligations of the United States:				
(i) Obligations issued on or before September 1, 1917; all postal savings bonds; Treasury notes issued prior to December 1, 1940; and Treasury bills issued prior to March 1, 1941.		11,181,216.46		5,832,140.28
(ii) Obligations issued prior to March 1, 1941.		385,980,251.34		512,189,451.49
(iii) United States savings bonds and Treasury bonds issued prior to March 1, 1941.		585,433,959.75		1,253,982,871.40
(iv) Treasury notes issued on or after December 1, 1940; and similar obligations of the United States issued on or after March 1, 1941.		17,025,258.48		14,379,928.09
(v) Obligations of Federal land banks, joint stock land banks, and Federal intermediate credit banks issued prior to March 1, 1941.		45,510,487.27		62,687,131.37
(vi) Obligations issued by other instrumentalities of the United States prior to March 1, 1941.		2,094,124.93		2,329,213.21
(d) Obligations of all instrumentalities of the United States issued on or after March 1, 1941.				2,042,446,987.11
5. Other investments (itemize) Schedule				51,712,795.18
6. Capital assets:				64,513,882.33
(a) Depreciable assets (itemize in separate schedule):				
Loss: Reserve for depreciation Schedule		30,076,675.17		25,734,306.21
(b) Depletable assets:				
Loss: Reserve for depletion				
(c) Land		5130,296.20		2,807,133.11
7. Other assets (itemize) Schedule				152,563,126.71
8. TOTAL ASSETS LIABILITIES				35,689,891,465.92
9. Accounts payable Deposits				31,494,265,835.21
10. Bonds, notes, and mortgages payable:				
(a) With original maturity of less than 1 year				
(b) With original maturity of 1 year or more				
11. Accrued expenses (itemize) Interest and Taxes				8,199,273.93
12. Other liabilities (itemize) Suspense				9,372,054.77
13. Surplus reserves (itemize in separate schedule) Schedule				28,120,361.99
14. Capital stock:				
(a) Preferred stock		8,215,920.00		8,215,920.00
(b) Common stock		50,000,000.00		50,000,000.00
15. Paid-in or capital surplus				62,000,000.00
16. Earned surplus and undivided profits				21,151,211.33
17. TOTAL LIABILITIES				42,765,067,915.29

Schedule M.—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

1. Total distributions to stockholders charged to earned surplus during the taxable year:			13. Earned surplus and undivided profits at close of preceding taxable year (Schedule L)		21,151,211.33
(a) Cash		10,412,220.41		9,294,657.02	
(b) Stock of the corporation			14. Adjusted net income (item 37, page 1)		1,860.41
(c) Other property			15. Nontaxable and partially exempt income:		1,915.07
2. Contributions (excess over 5 percent limitation)		5,022,000.00	(a) Interest on P.T.O. EXEMPT Profit Tax		
3. Federal income and excess profits taxes			(b) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States corporations		4,778,677.13
4. Income taxes claimed as a credit in whole or in part in item 42, page 1			(c) Obligations of instrumentalities of the United States:		
5. Federal taxes paid on tax-free covenant bonds			(i) Obligations issued on or before September 1, 1917; all postal savings bonds; Treasury notes issued prior to December 1, 1940; and Treasury bills issued prior to March 1, 1941.		52,540.48
6. Excess of capital losses over capital gains			(ii) United States savings bonds and Treasury bonds owned in the principal amount of \$5,000 or less, issued prior to March 1, 1941.		212.50
7. Additions to surplus reserves (list separately):			(iii) United States savings bonds and Treasury bonds in excess of the principal amount of \$5,000 issued prior to March 1, 1941.		8,247,942.45
(a) Schedule M 1		8,740,049.61	(4) Obligations of instrumentalities of the United States:		
(b) Schedule M 1		650,008.76	(i) Obligations of Federal land banks, joint stock land banks, and Federal intermediate credit banks issued prior to March 1, 1941.		171,905.86
8. Other unallowable deductions:			(ii) Obligations issued by other instrumentalities of the United States prior to March 1, 1941.		595,966.55
(a) Over accrual taxes		151,211.62	(i) Other nontaxable income (itemize):		15,657.00
(b)			(1) Recoveries last year		9,865.00
9. Adjustments not recorded on books (itemize):			(2) Dividends—Schedule E		223,777.50
(a) M.E.R.Corp. Rent (net)		92,201.14	16. Charges against surplus reserves (itemize):		3,861,129.55
(b) Dividends - Trust Fund		2,721.75	Schedule M 1. A and B		3,701.55
10. Sundry debits to earned surplus (itemize):			17. Adjustments not recorded on books (itemize):		1,700,142.10
(a) Surplus		13,000,000.00	Salaries - Bonds & Real Estate		173.41
(b)			18. Sundry credits to earned surplus (itemize):		77,414.79
11. Earned surplus and undivided profits at close of the taxable year (Schedule L)		12,051,167.67	Total of lines 13 to 18		1,729.79
12. Total of lines 1 to 11		60,121,583.96			8,50,121,583.96

EXCESS PROFITS TAX. (See Instructions for Form 1121)

(a) Is an excess profits tax return on Form 1121 being filed for the taxable period covered by this return? Yes  
 (b) If a personal service corporation (other than a member of an affiliated group of corporations filing a consolidated return) signifies below its does not to be subject to the excess profits tax, it shall be exempt from such tax and the provisions of Supplement S, Chapter 1, shall apply to its shareholders in such corporation who were such shareholders on the last day of the taxable year of the corporation. (Attach Form 1121P)  
 (c) If corporation claims exemption under section 727 of the Internal Revenue Code, state basis of claim.  
 (d) If an excess profits tax return is not being filed for the reason that it is claimed that the excess profits net income computed under the invested capital method is not greater than \$5,000, the following Schedule N should be filled in. The completion of Schedule N does not constitute the filing of excess profits tax return.

Schedule N.—EXCESS PROFITS NET INCOME COMPUTATION

1. Normal-tax net income (computed without credit for income subject to excess profits tax) (item 40 plus item 38, page 1)—		6. Dividends received credit adjustment (item 12, page 1), less the sum of (a) dividends received between constructive from foreign personal holding companies, and (b) dividends received on stock held primarily for sale in the ordinary course of business or otherwise by a dealer in securities; minus item 38, page 1.	
2. Net short-term capital gain (do not enter net short-term capital loss)		7. Net gain from sale or exchange of capital assets (item 12 (e), page 1)	
3. 50 percent of interest on borrowed capital		8. Income from retirement or discharge of bonds, etc.	
4. Adjustment to net operating loss deduction under section 711 (a) (2) (L)		9. Refunds and interest on Agricultural Adjustment Act taxes	
5. Total of lines 1 to 4		10. Recoveries of bad debts	
		11. Total of lines 6 to 10	
12. Excess profits net income (for purposes of determining necessity for filing return) (line 5 minus line 11)			



Other Earnings—Line 14	
Service Charges .....	\$4,892,482.51
Collection Charges .....	251,575.30
Loan Fees .....	218,477.03
Exchange .....	766,922.01
Overs .....	245,457.89
Brokerage .....	26,719.57
Discounts .....	7,006.20
Commissions .....	137,564.28
I. C. L. Fees .....	407,250.85
Trust Department Earnings .....	1,731,535.00
Trustee Fees .....	20,075.75
O. R. E. Income .....	225,574.65
Recoveries .....	1,400,099.65
Miscellaneous .....	438,543.34
	<hr/>

## Gain &amp; Losses from Sale Non Capital Assets—Line 12 b

Description	Sales Price	Cost	Expenses	Depreciation	Gain or Loss
Bonds .....	\$1,940,490,418.12	\$1,940,407,197.19			\$ 83,220.93
Bank Premises .....	2,856,655.54	4,244,250.72			473,359.93
Other Real Estate .....	2,662,576.03	3,054,519.77			213,788.34
Auto .....	625.00	890.95			134.98
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Total.....	<u>\$1,946,010,274.69</u>	<u>\$1,947,706,858.63</u>	<u>\$3,141.05</u>	<u>\$1,095,932.63</u>	<u>\$603,792.36</u>
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Bad Debts—Line 20					
Loans .....					\$1,223,787.50
Cheeks .....					86,657.39
Interest .....					63,461.97
Losses Charged Reserves .....					13,741.58
Miscellaneous .....					721,639.89
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>

## Bank of America NT &amp; SA 1943 Schedules (Cont'd)

## Taxes—Line 22

Social Security .....	\$ 838,434.70
Bank Examination .....	190,965.20
Capital Stock .....	258,000.00
Real Estate .....	858,938.00
Franchise .....	3,121,152.81
Trust Examination .....	5,758.75
Federal Deposit Insurance .....	1,882,641.84
Miscellaneous .....	4,376.97
	\$7,160,268.27

## Other Deductions—Line 29

Maintenance Contracts .....	\$956,749.30
Heat, Fuel, Lights, Power, Water, Supplies, Rubbish .....	429,557.95
Advisory Board & Directors Fees .....	84,504.45
Legal .....	180,098.94
Stationery & Office Supplies .....	673,288.47
Subscriptions & Reports .....	69,746.62
Advertising .....	577,195.38
Dues .....	109,879.22
Telephone & Telegraph .....	481,230.70
Postage .....	794,371.82
Travel .....	236,344.10
Insurance .....	264,399.05
Janitor Contracts .....	50,578.38
Shorts .....	328,698.28
O. R. E. Expense .....	111,592.00
London Branch Loss .....	26,294.82
San Clemente Loss .....	15,657.00
Miscellaneous .....	207,970.13
	\$5,598,156.61

Depreciation—Line 25	Cost	Depreciation Prior Years	Remaining Cost	1943 Depreciation
Bank Premises .....	\$23,005,523.26	\$ 4,071,401.07	\$18,934,122.19	\$ 272,697.67
Alterations—Leased B/P .....	1,388,977.75	801,241.99	587,735.76	123,001.15
Safe Deposit Equipment .....	3,599,115.17	1,016,557.16	2,582,558.01	72,010.22
Fixtures .....	9,726,795.64	7,042,914.51	2,683,881.13	513,721.94
Furniture .....	6,577,354.57	4,394,961.08	2,182,393.49	312,949.41
Addressograph Equipment .....	43,309.86	36,399.63	6,910.23	2,583.11
Automotive Equipment .....	164,506.86	84,445.34	80,061.52	26,392.58
Personal Property .....	3,061.93	204.13	2,857.80	204.13
Improvements—O. R. E. .....	770,734.47	88,153.22	682,581.25	30,632.05
Restorations .....	50,498.35	29,322.49	21,175.86	1,425.92
Total.....	<u><u>\$45,329,877.86</u></u>	<u><u>\$17,565,600.62</u></u>	<u><u>\$27,764,277.24</u></u>	<u><u>\$1,355,618.18</u></u>

Bank of America N. T. & S. A.—1943

Explanatory Statement as to Losses Included in  
Losses Reported in Schedule D

The Comptroller of the Currency insisted that the cost less depreciation of certain properties owned by this bank exceeded its present value and that a charge-off had to be made to reduce the cost to present value. In order to accomplish this in a manner consistent with the Bank's policy and contention that its properties should be carried at cost (less a reasonable allowance for current depreciation) it sold these properties to Capital Company. The selling price was fixed at the present value of the property and Capital Company paid the selling price in cash. At a later date Merchants National Realty Corporation, a wholly owned subsidiary of the Bank, purchased these properties from Capital Company, for cash, for the same price at which Capital Company had purchased them. The loss resulting from this sale is claimed on this return since the Income Tax statute contains no provisions exempting either gain or loss from such a transaction from being included in computing net income. Furthermore, this loss should be deductible in any event as a loss, because it was taken in compliance with a requirement of the Comptroller of the Currency.

Admitted November 7, 1949.

Mr. Koster: Exhibit 22-V being the income and excess profits tax return of the Merchants National Realty Corporation for 1943. [25]

The Court: That is received in evidence.

(Whereupon the document was marked for identification as Joint Exhibit 22-V and was received in evidence.)







## Schedule L.—BALANCE SHEETS. (See Instruction L)

	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
1. Cash	\$ 21,451.94	21,310.31	\$ 75,900.83	\$ 290,021.58
2. Notes and accounts receivable:				
Less: Reserve for bad debts	141.68	141.68	75,759.30	75,759.30
3. Inventories (itemize in separate schedule)				
4. Investments in governmental obligations:				
(a) Obligations of State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions				
(b) Obligations of the United States:				
(i) Obligations issued on or before September 1, 1947; all postal savings bonds; Treasury notes issued prior to December 1, 1940; and Treasury bills issued prior to March 1, 1941				
(ii) United States savings bonds and Treasury bonds issued prior to March 1, 1941				
(iii) Treasury notes issued on or after December 1, 1940; and all other obligations of the United States issued prior to March 1, 1941				
(c) Obligations of instrumentalities of the United States:				
(i) Obligations of Federal land banks, joint stock land banks, and Federal intermediate credit banks issued prior to March 1, 1941				
(ii) Obligations issued by other instrumentalities of the United States prior to March 1, 1941				
(d) Other obligations of instrumentalities of the United States issued on or after March 1, 1941				
5. Other investments (itemize)				
6. Capital assets:				
Bank Premises				
(a) Depreciable assets (itemize in separate schedule)	\$13,056,458.10		\$14,567,523.95	
Less: Reserve for depreciation	9,368.76		9,368.76	
Furniture & Fixtures				
(b) Depreciable assets	\$13,065,828.86		\$14,576,892.71	
Less: Reserve for depreciation	9,886,444.08	9,079,382.78	4,358,789.52	10,218,103.19
(c) Land				
8. Other assets (itemize)				
Prepaid Expenses				
9. Total Assets				
LIABILITIES				
10. Accounts payable:				
11. Bonds, notes, and mortgages payable:				
(a) With original maturity of less than 1 year				
(b) With original maturity of 1 year or more				
12. Accrued expenses (itemize)				
Reserva for Taxes				
13. Other liabilities (itemize)				
Insurance	\$ 201,255.49		\$ 231,100.34	
Rental	14,325.12		11,411.52	
14. Surplus reserves (itemize in separate schedule)				
15. Capital stock:				
(a) Preferred stock				
(b) Common stock				
16. Paid-in or capital surplus				
17. Earned surplus and undivided profits				
18. Total Liabilities				

## Schedule M.—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

1. Total distributions to stockholders charged to earned surplus during the taxable year:			13. Earned surplus and undivided profits at close of preceding taxable year (Schedule L)	\$ 350,759.56
(a) Cash			14. Adjusted net income (item 37, page 1)	
(b) Stock of the corporation			15. Nontaxable and partially exempt income:	
(c) Other property			(a) Interest on:	
2. Contributions (excess over 5 percent limitation)			(1) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	
3. Federal income and excess-profits taxes			(2) Obligations of the United States:	
4. Income taxes claimed as a credit in whole or in part in item 42, page 1			(i) Obligations issued on or before September 1, 1947; all postal savings bonds; Treasury notes issued prior to December 1, 1940; and Treasury bills issued prior to March 1, 1941	
5. Federal taxes paid on tax-free covenant bonds			(ii) United States savings bonds and Treasury bonds owned in the principal amount of \$5,000 or less, issued prior to March 1, 1941	
6. Excess of capital losses over capital gains			(iii) United States savings bonds and Treasury bonds owned in excess of the principal amount of \$5,000 issued prior to March 1, 1941	
7. Additions to surplus reserves (list separately):			(C) Obligations of instrumentalities of the United States:	
(a) Self Insurance	\$ 32,460.48		(i) Obligations of Federal land banks, joint stock land banks, and Federal intermediate credit banks issued prior to March 1, 1941	
(b)			(ii) Obligations issued by other instrumentalities of the United States prior to March 1, 1941	
8. Other unallowable deductions:			(b) Other nontaxable income (itemize):	
(a)			(1)	
(b)			(2)	
9. Adjustments not recorded on books (itemize):			16. Charge against surplus reserves (itemize):	
(a) Real Estate Sales	\$ 99,924.03		Self Insurance Losses	2,625.63
(b)			17. Adjustments not recorded on books (itemize):	
10. Bundry debits to earned surplus (itemize):			1942 Rent Adjustment	141,788.56
(a) 1942 Rent Adjustment	\$ 49,504.44		18. Bundry credits to earned surplus (itemize):	
(b)			19. Total of lines 13 to 18	\$ 495,173.77
11. Earned surplus and undivided profits at close of the taxable year (Schedule L)				
12. Total of lines 1 to 11	\$ 495,173.77			

## EXCESS PROFITS TAX. (See Instructions for Form 1121)

(a) Is an excess profits tax return on Form 1121 being filed for the taxable period covered by this return? Yes.

(b) If a personal service corporation (other than a member of an affiliated group of corporations filing a consolidated return) signifies below its desire not to be subject to the excess profits tax, it shall be exempt from such tax and the provisions of Supplement S, Chapter 1, shall apply to the shareholders in such corporation who were such shareholders on the last day of the taxable year of the corporation. (Attach Form 1121PS)

(c) If corporation claims exemption under section 727 of the Internal Revenue Code, state basis of claim.

(d) If an excess profits tax return is not being filed for the reason that it is claimed that the excess profits net income computed under the invested capital method is not greater than \$5,000, the following Schedule N should be filed in. The completion of Schedule N does not constitute the filing of an excess profits tax return.

## Schedule N.—EXCESS PROFITS NET INCOME COMPUTATION

1. Normal-tax net income (computed without credit for income subject to excess profits tax) (item 40 plus item 38, page 1)		6. Dividends received credit adjustment (item 12, page 1, minus the sum of (a) dividends received (actual or constructive) from foreign or personal holding companies, and (b) dividends received on stock held primarily for investment purposes by a holder in securities, minus item 39, page 1)	
2. Net short-term capital gains (do not enter net short-term capital loss)		7. Net gain from sale or exchange of capital assets (item 12 (e), page 1)	
3. 50 percent of interest on borrowed capital		8. Income from retirement or discharge of bonds, etc.	
4. Adjustment to net operating loss deduction under section 711 (a) (2) (L)		9. Refunds and interest on Agricultural Adjustment Act taxes	
5. Total of lines 1 to 4		10. Recoveries of bad debts	
		11. Total of lines 6 to 10	



Form 1121  
Department  
Revenue Service

**UNITED STATES  
CORPORATION EXCESS PROFITS TAX RETURN  
For Calendar Year 1943**

or fiscal year beginning 1943, and ending 1944

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

Merchants National Realty Corp.

500 Montgomery St.

San Francisco = California

Business group serial number entered on page 1, Form 1120 182

**EXCESS PROFITS TAX COMPUTATION**

	COLUMN 1 INCOME CREDIT METHOD	COLUMN 2 INVESTED CAPITAL CREDIT METHOD
Profits net income (line 16, Schedule A)	\$	None
Exemption	\$ 5,000	\$ 5,000
Profits credit—based on income (line 46, Schedule B)	xxxxxx	xxxxxx
Profits credit—based on invested capital (line 41, Schedule C)	xx	1,290,195
Excess profits credit adjustment (attach schedule)		29
of items 2 to 5	\$	\$ 1,296,195
between item 1 and item 6	\$	None
Excess profits net income (item 7, column 1, or item 7, column 2, whichever is applicable)		\$
of item 8		\$
(computed without regard to the credit provided by section 26 (e)) (item 35, page 1, Form 1120)		\$
(a) Dividends received credit (85 percent of total of column 2, Schedule E, Form 1120 (excluding dividends received on certain preferred stock of a public utility), but not in excess of 85 percent of item 10 above)	\$	
(b) Dividends paid on certain preferred stocks if taxpayer is a public utility (line 20, page 2, Form 1120)	\$	
Income (computed without regard to the credit provided by section 26 (e))		\$
of item 12		\$
Ex under Chapter 1 (other than section 102) for the taxable year (item 41, page 1, Form 1120)		\$
Item 13 over item 14		\$
Item 15, whichever is lesser		\$
Refined by reason of the application of section 710 (a) (5) (relating to abnormality under section 722) (attach schedule)		\$
Ex tax:		\$
in 16 minus item 17	\$	
Schedule is filed under question (g), page 2, amount of tax as computed in such schedule		\$
in 18 (a) or item 18 (b), whichever is applicable		\$
Credit for income taxes paid to a foreign country or United States possession allowed to a domestic corporation (portion not used in computing item 42, page 1, Form 1120)		\$
minus item 19		\$
Credit for debt retirement (item 28, below)		\$
minus item 21		\$
If any, due to application of section 734 (adjustment in case of position inconsistent with prior income tax liability) (schedule)		\$
Ex tax due (item 22 plus item 23, or item 22 minus item 23, whichever is applicable)		\$ None

**POST-WAR REFUND OF EXCESS PROFITS TAX AND CREDIT FOR DEBT RETIREMENT**

Excess profits tax (item 18 (c), above)	\$	\$
Allowable under sections 780 and 781 (10 percent of item 25) (but in cases where item 19 is applicable, see Specific Instructions 25-20)	\$	\$
Amounts paid on indebtedness or net reduction in indebtedness under section 783 (b) (2)	\$	\$
Debt retirement allowable under section 783 (40 percent of item 27, but not in excess of 10 percent of item 25)	\$	\$

War refund credit (item 26 minus item 25)  
Signed, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is filed, duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

I and swear to before me this 26 day of March, 1944.  
*Robert Burn* Notary Public in and for the City, and County of San Francisco, CORPORATE SEAL  
(Signature of officer administering oath)  
Commission Expires April 12, 1944

I affirm that I have prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete return of all the information respecting the excess profits tax liability of the person for whom this return has been prepared of which I have any knowledge.

I and swear to before me this 26 day of March, 1944.  
*Robert Burn* Notary Public in and for the City, and County of San Francisco, CORPORATE SEAL  
(Signature of officer administering oath)  
Commission Expires April 12, 1944

(Signature of person preparing the return)  
C. H. Neill  
(Signature of person preparing the return)  
(Signature of firm or employer, if any)

112-88112 (Name of firm or employer, if any)



## QUESTIONS

corporation May 13, 1927 (b) State or country Delaware  
 office in which your income tax return for the taxable year was filed 1st California  
 consolidated return? No. If so, procure from the collector Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed with the consolidated income tax return.  
 Among the excess profits credit under the invested capital method, do you elect to include in excess profits net income interest received on, reduced amount of amortizable bond premium under section 125 attributable to, all Government obligations described in section 22(b)(4) of the Internal Revenue Code? (Answer "yes" or "no") No.  
 transferor or transferee upon an exchange as defined by section 760 or 761 of the Internal Revenue Code? (Answer "yes" or "no") No.  
 return involve an adjustment of the excess profits tax liability due to the application of the sections specified in (1) below? (Answer "yes" or "no"). If answer is "yes":  
 Check the appropriate sections and submit schedules showing computation: 710(a)(4) ; 721 ; 726 ; 731 ; 735(b) ; 735(c) ; 736(a) ; 736(b) . (See General Instructions E, F, G, H, and I.) (Enter amount of excess profits tax as item 18 (b), page 1.)  
 From the schedules submitted under (1) above, enter any tax adjustment which results from the application of each of the following sections:  
 721, \$ .....; 726, \$ .....; 731, \$ .....  
 From the schedules submitted under (1) above, enter any income adjustment which results from the application of each of the following sections:  
 721, \$ .....; 731, \$ .....; 735(b), \$ .....; 735(c), \$ .....  
 Amount of total assets as of the end of the taxable year. (From Form 1120, page 4, line 8, last column), \$.....

Schedule A.—EXCESS PROFITS NET INCOME COMPUTATION

	COLUMN 1 INCOME CREDIT METHOD	COLUMN 2 INVESTED CAPITAL CREDIT METHOD
x net income (computed without allowance of credit for income subject to excess profits without allowance of dividends received credit) (item 37, page 1, Form 1120). . . . .	\$.....	\$..... <u>None</u>
term capital gain (do not enter net short-term capital loss). . . . .		
net to net operating loss deduction. . . . .		
in deductions limited by income. . . . .		
of interest on borrowed capital. . . . .	x x x x x x x x	x x
on Government obligations (see question (c) above, for election). . . . .	x x x x x x x x	x x
total of lines 1 to 6. . . . .	\$.....	\$.....
from sale or exchange of capital assets (item 12 (a), page 1, Form 1120). . . . .	\$.....	\$.....
from retirement or discharge of bonds, etc. . . . .		
and interest on Agricultural Adjustment Act taxes. . . . .		
of bad debts. . . . .		
in deductions limited by income. . . . .		
ends received credit adjustment (item 13, page 1, Form 1120, excluding dividends received from foreign corporations). . . . .		x x x x x x x x x x
ends received credit adjustment (item 13, page 1, Form 1120, excluding dividends received from foreign personal holding companies and dividends received on stock held primarily for sale to customers by a dealer in securities). . . . .		x x x x x x x x x x
income of certain industries with depletable resources. . . . .		
total of lines 8 to 14. . . . .	\$.....	\$.....
excess tax net income computed without regard to deductions applicable to life insurance policies (line 7 minus line 15). . . . .	\$.....	\$.....
as applicable to life insurance companies. . . . .		
excess net income computed under income credit method or invested capital credit method, or line 16 minus line 17 in case of a life insurance company. . . . .	\$.....	\$..... <u>None</u>

16-23310-2

Note: - This company is a subsidiary of Bank of America NT & SA and operated at neither gain or loss per rent agreement with parent corporation.



Merchants National Realty Corp.  
1943 Schedules

## Gain &amp; Loss—Sale of non-Capital Assets—Line 12 B

Item	Amount Received	Cost	Impr. Exp.	Depr. Allowed	P/L
Bank Premises .....	\$ 84,650.00	\$ 87,919.10	\$ 4,143.65	\$ 20,226.96	\$12,814.21
Other Real Estate .....	\$1,302,594.65	1,297,176.10	37,983.41	99,924.03	67,359.17
Total.....	\$1,387,244.65	\$1,385,095.20	\$42,127.06	\$120,150.99	\$80,173.38

## Other Income—Line 14

Discounts .....	\$ 62.21				
General Privileges .....	129.35	\$191.56			

## Taxes—Line 22

Real Estate .....	\$343,045.14				
Franchise—Delaware .....	150.00				
Franchise—California .....	25.00	\$343,220.14			

## Losses—Line 24

Fires—not insured .....	\$2,625.63				
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## Depreciation—Line 25

Buildings	Cost	Depreciation Prior Years	Balancce	Depreciation 1943
.....	\$15,164,324.82	\$4,076,999.35	\$11,087,325.47	\$392,572.40

Other Deductions—Line 29			
Office Expense .....	\$ 29.18		
Telephone .....	1,384.67		
Management Fee .....	60,000.00		
Maintenance & Repairs .....	71,599.46		
Utilities .....	16,646.74		
Laundry—Towels, etc. ....	2,476.19		
Building Supplies .....	969.92		
Insurance .....	25,171.24		
Tenant Charges .....	6,550.43		
Operating Expenses .....	12,424.65		
Pension Expense .....	463.37		
	-----		

## Statement of Affiliations—Q 9

Parent

Bank of America N.T. &amp; S.A.—S. F.....

% Owned

100

Date Acquired

10/1/31

Return Filed  
San Francisco

## Statement of Salary Adjustments—Q 11

Made in accordance with salary rate schedules established before 10/3/42.  
Otherwise authorizations on file.

Admitted November 7, 1949.

Mr. Koster: That concludes the presentation.  
The Petitioner rests.

The Court: Now, those first exhibits, Q, R, and S, are little booklets. Do they more or less speak for themselves?

Mr. Koster: Yes. They are annual reports of the Bank of America and Transamerica Corporation.

Mr. Crouter: I have only a correction to make, if the Court please. A few moments ago, when I referred to the question of consideration of tax matters, I believe I inadvertently referred to Exhibit 20-T and that should have been Exhibit 14-N. That would be straightened out on brief but I wouldn't want that to stand as an error in the record. Respondent has nothing further to submit.

The Court: The briefs in this case will be due December 28th, the original briefs, and January 26, 1950, for the reply briefs.

This proceeding is now submitted.

Mr. Koster: Thank you.

Mr. Crouter: Thank you.

(Whereupon, at 6:05 o'clock p.m., the hearing in the above-entitled matter was concluded.) [26]

#### Certificate

I, Franklin R. Greene, one of the official reporters of the Tax Court of the United States under its reporting contract, assigned to report certain proceedings during the session of The Tax Court in

San Francisco, California, beginning November 7, 1949, do hereby Certify as follows:

That I reported all of the proceedings in the case of Bank of America National Trust and Savings Association, Docket No. 8993, on November 7, 1949, before the Honorable Marion J. Harron, Judge of The Tax Court;

That I did well and truly, to the best of my ability, record in Stenotypy fully, completely and accurately all of the proceedings which I was assigned to report, including all colloquy and statements made during the proceedings, and all questions to and answers given by witnesses;

That my stenotype record is full, complete and accurate; and

That the foregoing record is a true, complete and accurate transcript of my stenotype notes of all the proceedings which I reported, and all of the testimony which was taken in the above-entitled cause.

/s/ FRANKLIN R. GREENE,  
Reporter.

Date: Nov. 23, 1949.

Filed T.C.U.S., December 7, 1949.

The Tax Court of the United States

Docket No. 8993

BANK OF AMERICA NATIONAL TRUST  
AND SAVINGS ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Promulgated October 20, 1950

### FINDINGS OF FACT AND OPINION

Petitioner transferred legal title to eight of its banking premises to Capital Company for a consideration which was less than the adjusted bases of the properties. Capital Company was the wholly owned subsidiary of a holding company which owned a substantial interest in petitioner. Prior to the transfers, the parties agreed orally that title to the properties would be reconveyed on petitioner's command to petitioner, or to its wholly owned subsidiary, Merchants, in about 30 days for the same consideration as was originally advanced. During the time Capital Company held title to the properties, it was paid a "rental" calculated to yield a return to it of 6 per cent per year upon the amounts advanced to petitioner. After approximately 30 days, Capital transferred formal title to the bank premises to Merchants.

Merchants was a wholly owned subsidiary of petitioner which had no salaried employees of its

own. Its only business was the ownership of property which it leased to petitioner, and whatever work was necessary to the operation of this business was performed by employees of petitioner. Petitioner had complete dominion and control over Merchants and the properties transferred to it.

Held:

1. The sale to Capital Company was not bona fide, and Capital Company was a mere conduit for the conveyance of legal title from petitioner to Merchants.
2. The transactions between petitioner and Merchants lacked substance and reality, and petitioner did not suffer a deductible loss therefrom. Higgins v. Smith, 308 U. S. 473, followed.

George H. Koster, Esq., for the petitioner.

Earl C. Crouter, Esq., for the respondent.

The Commissioner originally determined a deficiency in petitioner's income tax liability for 1943 in the amount of \$915,040.93 and a deficiency in petitioner's declared value excess profits tax liability for 1943 in the amount of \$161,650.70. In an amended answer, the Commissioner has made claim for increased deficiencies in both taxes, increasing the deficiencies to \$942,337.38 and \$166,472.87, respectively, upon his determination that petitioner had additional income in 1943. The petitioner concedes that the increase in the amount of its taxable income, in this respect, is correct.

The issue in this proceeding is whether the transfer by petitioner of the legal title to eight of its

banking premises for a price which was less than the adjusted bases of the properties resulted in deductible losses to petitioner in the amount of \$464,811.68 where, pursuant to an oral agreement with petitioner, the transferee corporation reconveyed title to the banking premises to a wholly owned subsidiary of petitioner about 30 days later.

Other adjustments made by respondent in petitioner's income are not in dispute.

Petitioner filed its returns for the year in question with the collector for the first district of California.

The record in this proceeding consists of a stipulation of facts and various joint exhibits.

### Findings of Fact

All of the facts which have been stipulated are found as stipulated.

Petitioner is a national banking association which was incorporated on March 1, 1927, under the laws of the United States. It operates a banking system in California through approximately 500 branches, and has its principal place of business in San Francisco. Title to some of the buildings in which petitioner conducts its banking business is held in the name of petitioner, and title to other properties is held in the name of petitioner's wholly owned subsidiary, Merchants National Realty Corporation (hereinafter referred to as "Merchants").

At all times pertinent to this proceeding, Merchants was a wholly owned subsidiary of petitioner. Many of the officers and directors of petitioner

were also officers and directors of Merchants. The only business of Merchants was the ownership of property which it leased to petitioner. Merchants had no salaried employees. Whatever work was necessary to the operation of its business was performed by employees of petitioner. Merchants' place of business was in the headquarters of petitioner in San Francisco.

The basic lease agreements under which petitioner leased property from Merchants provided that in exchange for a 10-year lease, petitioner would pay to Merchants as rent "an amount equal to the total of all expenses and charges of the Lessor, which are allowable to the Lessor, Merchants National Realty Corporation, as deductions from gross income for Federal income tax purposes, less an amount equal to the total income of the Lessor derived from all services other than the rental to be paid hereunder."

On August 31, 1939, bank examiners from the office of the United States Comptroller of the Currency determined that the values of the banking properties in the books of petitioner were in excess of their fair market value, and they recommended that petitioner be required to reduce the book values to the actual values of the banking properties in its books. Petitioner refused to comply with the recommendation of the bank examiners and contended that the Comptroller of the Currency did not have the authority to require it to write down the value of any of its assets. After a number of conferences and exchanges of correspondence be-

tween petitioner and the Office of the Comptroller of the Currency, an agreement was reached on March 6, 1940, as to the amount at which each banking property should be carried on petitioner's books. This agreement provided that "the unallocated reserve set up by the Bank shall be reduced by the difference between the present carrying value of each such premise and the value of such as determined by the committee [comprised of three Government banking officers]. \* \* \* The remainder of such reserve, if any, may be returned to the undivided profits accounts." In March, 1941, petitioner informed the committee that:

We will agree to establish a new cost basis for the bank premises listed in Exhibit "A" hereto attached in such manner as will result in a charge of approximately \$1,000,000 against our profits for the period ending June 30, 1941, and a similar charge in the third quarter of 1941. The new cost basis to be established shall be determined from the American Appraisal Company appraisal, using the lowest appraisal of the American Appraisal Company as to the particular properties involved. No adjustment will be made as to properties with respect to which American Appraisal Company's most adverse appraisal exceeds book value.

The committee recommended that \$2,000,000 be written off by petitioner in 1941 and \$2,000,000 be written off in 1942. The Comptroller of the Currency accepted this proposal and informed peti-

titioner to that effect. The Comptroller also informed petitioner that:

Any or all of the amount may be charged to Undivided Profits instead of the Unallocated Reserve if desired, the amount of that Reserve, however, not to be reduced below \$4,000,000 except after writeoff of the \$2,000,000 in 1941 and approximately \$2,000,000 in 1942.

The petitioner informed the Comptroller that these arrangements for a "reduction in book value of banking premises" were satisfactory to it.

George H. Koster, one of petitioner's counsel, was asked by petitioner if he could advise it of a method whereby the Comptroller's requirement that the properties be written down could be met, without at the same time receding from petitioner's position that it was entitled to carry the properties at cost. He gave suggestions to the petitioner in a memorandum to petitioner dated January 10, 1941, part of which is set forth in the margin.<sup>1</sup>

Koster and L. M. Giannini, president of petitioner, discussed the tax effects of the transactions and the results to be achieved by them with a

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1 \* \* \* The Bank called me into the matter, explaining to me the controversy and asked me to advise them of a method by which they could comply with this accord without receding from their position that they should be entitled to carry their properties at cost.

I advised them that they could probably arrange to purchase and sell properties between the Bank and Merchants National Realty Corporation, so that the purchase price of the respective properties would be a figure satisfactory to the Committee and in accordance with the agreement. The Bank

representative of the Comptroller who informed them that the Comptroller could not pass upon the tax consequences of any of the transactions.

Transamerica Corporation is a holding company. It owns substantial amounts of stock of many banks and industrial concerns. During 1941, 1942, and 1943, either Transamerica Corporation or its subsidiary companies owned common and preferred stock of petitioner, each of which had equal voting rights. During 1941, 1942, and 1943, the outstanding common stock of petitioner amounted to 4,000,000 shares; and there was preferred stock outstanding in the amount of 540,000 shares in 1941, 460,796 shares in 1942, and 405,146 shares in 1943. Transamerica and its subsidiaries owned

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officers felt that since it was a transaction between the parent and a wholly owned affiliate, the purchase and sale transaction might be ignored and the transaction considered a write-down which would establish a precedent whereby the Bank might be compelled to continue the practice of arbitrarily writing down its banking premises. The Bank, of course, did not wish to establish a precedent or to be in a position where it could ever be faced with the contention that it had previously recognized the legality of any requirement by the Comptroller of Currency that banking premises should be arbitrarily written down.

I then suggested that if the Bank and Merchants National Realty Corporation should be willing to assume the risks which might result where property is removed from their hands even for a short period of time, they might arrange with some other company, such as Capital Company, to purchase the property from one and then sell to the other. Capital Company may do this as an accommodation since they have had considerable dealings with the

common and preferred stock of petitioner in 1941, 1942, and 1943 in the total amounts set forth below:

**Stock Owned by Transamerica and Subsidiaries**

	1941	1942	1943
Common .....	899,820	692,394	570,134
(outstanding) .....	(4,000,000)	(4,000,000)	(4,000,000)
Preferred .....	500,844	425,174	370,634
(outstanding) .....	(540,000)	(460,796)	(405,146)

Capital Company (hereinafter referred to as "Capital") is a wholly owned subsidiary of Transamerica Corporation and is engaged in the real estate business.

Sometime in 1941, R. G. Smith, who was the executive vice-president of petitioner and the president of Merchants, conferred with E. C. Woodruff, the president of Capital. An agreement was reached between these two executives in behalf of their respective companies. The parties to this

Bank, but it would seem they might and would probably be justified in being compensated for the work involved in the transfers of the property. Such an arrangement would avoid the element of direct transactions between affiliated companies, at least in form, even though the effect might be the same. Of course, the element of risk in transactions such as this, would be a distinction as against direct transactions between the affiliated companies.

The officers of the Bank inquired as to the results of such transactions for tax purposes and especially whether there was anything wrong in transactions such as this. I told them there is nothing in the tax law which prohibits business transactions having a definite purpose, just so long as those transactions are not used for the purpose of defrauding the Government of taxes. \* \* \*

proceeding have stipulated that this agreement provided:

\* \* \* That the Bank [petitioner] or Merchants would execute deeds to Capital Company with respect to [certain] banking premises \* \* \* ; that Capital Company would accept delivery of such deeds; that Capital Company would deliver its checks to the Bank [petitioner] and to Merchants in amounts equal to the value of said premises as appraised by the American Appraisal Company; that the Bank [petitioner] intended to and would receive back, deeds to the said property within thirty days or so after delivery of deeds thereto to Capital Company, and Capital Company agreed to execute and deliver deeds to said property to the Bank or Merchants at any time upon request of the Bank; that there would not be any written agreement between the Bank, Merchants and Capital Company providing for the execution and delivery of deeds from Capital Company to the Bank or to Merchants; that when the Bank requested delivery of deeds to such property from Capital Company to it or to Merchants, the Bank or Merchants would give its check to Capital Company for the same amount of the check which Capital Company gave the Bank or Merchants for the respective property, plus acquisition costs incurred by Capital Company in connection with the transaction; and that between the time of the delivery of the deeds with respect to the respec-

tive properties from the Bank or from Merchants to Capital Company, and the time of the delivery of the deeds with respect to the respective properties from Capital Company to the Bank or to Merchants, the Bank would pay to Capital Company as rental amounts equal to 6% per annum net upon the amounts paid by Capital Company to the Bank or to Merchants, as aforesaid. \* \* \*

Pursuant to this agreement, Merchants deeded four of the banking premises to which it held title to Capital in 1941, and Capital, in turn, deeded the properties to petitioner shortly thereafter. The amounts paid by petitioner to Capital were the same as the amounts which had been paid by Capital to Merchants. Merchants showed losses from these transactions on its books and in its tax return in the total amount of \$503,373.97. In 1942 Merchants similarly deeded ten of the banking premises to which it held title to Capital which, in turn, deeded them to petitioner for the same amounts which it had paid to Merchants. Merchants showed losses from these transactions in the amount of \$463,593.85 on its books and in its tax return.

In the year 1941, petitioner executed and delivered to Capital deeds to 16 banking premises. About 30 days after each deed was delivered to Capital, Capital executed and delivered a deed to the same property to Merchants. The amounts received by petitioner from Capital were the same as the amounts which were paid to Capital by Merchants. According to petitioner's books and tax

return, these transactions resulted in losses to it in 1941 which totalled \$1,383,039.64. In the year 1943, petitioner executed and delivered to Capital deeds to eight banking premises. About 30 days after each deed was delivered, Capital executed and delivered a deed to the same property to Merchants. The amounts received by petitioner from Capital for these properties were the same as the amounts received by Capital from Merchants. The details of the 1943 transactions are set forth in the following schedule:

## Properties Deeded by Petitioner in 1943 to Capital, and Deeded by Capital to Merchants.

Property	Cost	Depreciation	Net Cost	Rec'd by Pet. From Capital	Revenue Stamps	Pet.'s Books and Return	Loss per Deed to Merchants	
							Capital	Capital
Palo Alto .....	\$ 200,575.94	\$ 41,441.37	\$ 159,134.57	\$ 107,788.76	\$ 118.80	\$ 51,464.61	5- 7-43	6- 8-43
Fall Brook .....	10,561.60	1,329.30	9,232.30	7,477.09	8.25	1,763.46	5- 7-43	6- 8-43
Sacramento ....	1,505,312.78	445,475.13	1,059,837.65	971,262.59	1,068.65	89,643.71	6-30-43	7-29-43
Santa Maria ....	72,230.47	13,885.67	58,344.80	52,019.79	57.75	6,382.76	5- 7-43	6- 8-43
Oakland ....	2,076,834.44	378,437.66	1,698,396.78	1,441,888.17	1,586.20	258,094.81	6-30-43	7-29-43
Balboa .....	43,075.90	9,418.55	33,657.35	30,554.28	34.10	3,137.17	5- 7-43	6- 8-43
Mission .....	278,556.23	21,434.71	257,121.52	208,821.54	229.90	48,529.88	3-31-43	4-30-43
McArthur .....	45,047.70	5,642.65	39,405.05	33,647.17	37.40	5,795.28	5- 7-43	6- 8-43
Total.....	\$4,232,195.06	\$917,065.04	\$3,315,130.02	\$2,853,459.39	\$3,141.05	\$464,811.68		

The only losses directly involved in this proceeding are those claimed by petitioner for the year 1943 in the amount of \$464,811.68.

In carrying out the aforesaid transactions, all formalities in connection therewith, such as the execution and recording of deeds, the affixing of documentary stamp taxes, the transfer of fire insurance, and the recording of the transactions on the books of all companies as purchases and sales of property, were complied with. When the properties were deeded to Capital, the outstanding fire insurance policies covering the respective properties were amended by riders to provide that any loss payable thereunder should be paid to Capital; and when Capital deeded the properties to petitioner or to Merchants, the policies were again amended by riders to provide that any loss payable thereunder should be paid to petitioner or to Merchants, respectively.

Upon the execution and delivery of the deeds to the respective properties by petitioner or Merchants to Capital, petitioner and Capital executed a "lease" agreement with respect to each property, which provided for the payment by petitioner to Capital of a "rental" equal to a return of 6 per cent per year to Capital on the money which it had paid out.

All of the properties to which Merchants acquired formal title through Capital were immediately leased by Merchants to petitioner under the same form of a basic lease agreement between those parties as stated above.

At all times pertinent to this proceeding, the

banking properties which were the subject of the transactions involved herein were occupied and used by ranches of petitioner. It was not contemplated at any time that there would be any interruption or change in the use and occupancy of the banking properties by the branches of petitioner which occupied them.

The explanation given by the respondent in the notice of deficiency for disallowing the claimed loss deduction is set forth in the margin.<sup>2</sup>

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<sup>2</sup>(1) Net loss claimed on the sale of assets other than capital assets includes losses of \$464,811.68 on the sale of certain banking premises to the Capital Company. The Capital Company held legal title to these properties for a period of one month and received rent from you for such period of ownership. The properties were then sold by the Capital Company to the Merchants National Realty Corporation, your wholly owned subsidiary.

The Transamerica Corporation controlled all of the outstanding shares of the Capital Company. Approximately 22 per cent of your stock was owned by the Transamerica Corporation group.

Under date of August 1, 1936, you entered into an agreement with the Merchants National Realty Corporation whereby you leased from the Merchants National Realty Corporation certain banking premises. The rental was to be an amount equal to the total of all expenses and charges of the lessor allowable to said lessor as deductions from gross income for federal income tax purposes, less an amount equal to the total income of the lessor derived from all other sources. The result of this agreement is that all operations of the Merchants National Realty Corporation were merged with your operations, leaving no income of the Merchants National Realty Corporation subject to income tax.

Capital was merely a conduit through which petitioner made formal transfers of the title to the eight properties involved in this proceeding to its subsidiary, Merchants. The transfers of title to the eight properties by petitioner to Capital did not constitute bona fide sales of the parcels of property to Capital.

Petitioner at all times had complete ownership, dominion, and control over Merchants and over each of the eight parcels of property.

### Opinion

Harron, Judge: The issue in this proceeding is whether transfers by petitioner of the legal title to eight of its banking properties resulted in deductible losses under section 23(f).

Petitioner contends (1) that the transfers of properties to Capital were bona fide sales which resulted in deductible losses; and (2) that even if the transactions are viewed as sales of the properties by petitioner to Merchants, the fact that Merchants was a wholly owned subsidiary of petitioner does not require disallowance of the claimed deductions.

Respondent contends that the losses are not deductible because petitioner never relinquished dominion and control over the properties. With respect to the transfers to Capital, respondent con-

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It is held that no deductible loss resulted from the sale of banking premises to the Capital Company. Your taxable income is, therefore, increased \$464,811.68.

tends that the transfers did not constitute bona fide sales because of Capital's oral agreement to retransfer the properties to Merchants, a wholly owned subsidiary of petitioner. With respect to the transfers to Merchants, respondent contends that no loss was sustained by petitioner as a result of the transfers of the title to the properties to Merchants. Respondent emphasizes the point that Merchants was a wholly owned subsidiary of petitioner, subject to petitioner's complete dominion and control, and that the "lease" arrangements with Merchants were not arms-length lease agreements such as would be made with a stranger.

In order for a loss upon the sale of property to be deductible, it must be established by a bona fide sale. Higgins v. Smith, 308 U. S. 473. See, also, Regulations 111, section 29.23(e)(1), (f)(1). And the loss must be actual and real. Gregory v. Helvering, 293 U. S. 465; Burnet v. Huff, 288 U. S. 156; Weiss v. Wiener, 279 U. S. 333. Also, under section 23(f), a taxpayer must prove that a loss is sustained. The transactions between petitioner and Capital do not satisfy these requirements.

All of the facts in this proceeding have been stipulated, and they are not in dispute. In fact, the petitioner has not concealed at any time any of its arrangements, but has made full disclosures of them, at least as far as this proceeding is concerned. The facts show that petitioner conveyed the legal title to the properties to Capital, and that it meticulously complied with all of the customary formalities necessary for the transfers of title.

However, transfer of naked legal title is but one of the elements to be considered in determining the true nature of a transaction. *United States v. Utah-Idaho Sugar Co.*, 96 Fed. (2d) 756. The other circumstances present in this proceeding establish that there was not a bona fide sale of the properties to Capital with a complete termination of petitioner's interests in the properties.

Prior to the transfer of the banking properties to Capital, petitioner reached an agreement with Capital which provided:

\* \* \* that the Bank [petitioner] intended to and would receive back, deeds to the said property within thirty days or so after delivery of deeds thereto to Capital Company, and Capital Company agreed to execute and deliver deeds to said property to the Bank or Merchants at any time upon request of the Bank; that there would not be any written agreement between the Bank, Merchants and Capital Company providing for the execution and delivery of deeds from Capital Company to the Bank or to Merchants; that when the Bank requested delivery of deeds to such property from Capital Company to it or to Merchants, the Bank or Merchants would give its check to Capital Company for the same amount of the check which Capital Company gave the Bank or Merchants for the respective property, plus acquisition costs incurred by Capital Company in connection with the transaction; \* \* \*

Where a sale is made as part of a composite plan which includes, as in this proceeding, an agreement for the reacquisition of the property sold, and the plan is carried out, any loss suffered as a result of the "sale" of the property is not deductible. *Pierre S. DuPont*, 37 B.T.A. 1198; aff'd., 118 Fed. (2d) 544; certiorari denied, 314 U. S. 623; *Sidney M. Shoenberg*, 30 B.T.A. 659; aff'd., 77 Fed. (2d) 446; *Foster v. Commissioner*, 96 Fed. (2d) 130; *Commissioner v. Dyer*, 74 Fed. (2d) 685; certiorari denied, 296 U. S. 586. It makes no difference that the property is to be reacquired by a subsidiary or a close affiliate of the original seller, rather than by the seller itself. *Rand Company*, 29 B.T.A. 467; aff'd., 77 Fed. (2d) 450; *John M. Burdine Realty Co.*, 20 B.T.A. 54. The reason for the general rule was stated by the Court of Appeals in *Shoenberg v. Commissioner*, 77 Fed. (2d) 446, 449, as follows:

A loss as to particular property is usually realized by a sale thereof for less than it cost. However, where such sale is made as part of a plan whereby substantially identical property is to be reacquired and that plan is carried out, the realization of loss is not genuine and substantial; it is not real. This is true because the taxpayer has not actually changed his position and is no poorer than before the sale. The particular sale may be real, but the entire transaction prevents the loss from being actually suffered. Taxation is concerned with realities, and no loss is deductible which is not real.

The facts in this proceeding show beyond any doubt that there were no real and complete sales of any of the banking properties to Capital by petitioner in 1943 which can be recognized for tax purposes. Petitioner never relinquished dominion or control over the eight properties to Capital. Petitioner intended only a temporary vesting of title in Capital, and it was assured of its ability to recover the properties under its oral agreement with Capital.

Petitioner argues that it lost dominion and control over the properties because it could not have compelled Capital to reconvey the properties to it or its subsidiary. In other words, petitioner now asserts that its oral agreement violated the requirement of the statute of frauds that all agreements for the transfer of title to real property must be in writing, and, therefore, the oral agreement with Capital is now said to have been an invalid agreement. Aside from the point that partial performance probably took the transaction out of the reach of the statute of frauds, the fact is that the oral agreement actually was executed by the reconveyance of title to the properties by Capital and it was the intention of the parties that Capital should be merely a conduit through which petitioner could transfer formal title to Merchants.

The petitioner also refers us to Bancitaly Corporation, 34 B.T.A. 494, 509-16, in support of its contention that the transaction with Capital was a completed transaction which should be recognized for tax purposes, and contends that a hold-

ing in this proceeding which would sustain the respondent's determination, that is, a holding to the effect that the steps followed in the transaction with Capital had no substantive effect, would be inconsistent with our holding in Bancitaly Corporation. However, we find little similarity between this proceeding and that of Bancitaly Corporation in the matter of either the facts or the issue involved in the respective proceedings. In the Bancitaly case, the Bancitaly Corporation sold 150,000 shares of stock and subsequently reacquired 84,198 of the shares which it had sold. The issue in the case was whether the Bancitaly Corporation realized taxable income upon the sale of the 84,198 shares which it subsequently repurchased. As the basis for the holding that taxable income was realized, the Board expressly found as a fact that the sale of 150,000 shares of stock and the subsequent repurchase of 84,198 of the shares were two separate and independent transactions and that the original purchaser was under no obligation to resell any of the shares to petitioner. In this proceeding, however, Capital was merely a conduit for the passage of title to the eight bank properties from petitioner to Merchants. Capital was obligated to deliver deeds to the eight branch banks back to petitioner or Merchants, and the parties never intended, under any circumstances, that Capital should retain title to any of the eight properties.

In the last analysis we must weigh the evidence in this proceeding and make an independent determination about the transaction which is involved

here. This we have done, and we have concluded that respondent's determination on this issue must be sustained. The interjection of Capital between petitioner and Merchants does not insulate the transactions from any infirmities arising from the fact that Merchants was a wholly owned subsidiary of petitioner, subject to petitioner's complete dominion and control. The sale must be viewed as being made between petitioner as vendor and Merchants as vendee, and the question thus becomes what effect does the closeness of the relationship between petitioner and Merchants have upon the deductibility of the loss in question.

This is not a new question. In *Higgins v. Smith*, supra, the Supreme Court considered the question of whether a sale of stock at a loss by an individual to a corporation which was wholly owned by him resulted in a deductible loss to the individual. The business of the corporation consisted of buying and selling securities, largely from and to the taxpayer. The Supreme Court held that "domination and control is so obvious in a wholly owned corporation as to require a peremptory instruction that no loss in the statutory sense could occur upon a sale by a taxpayer to such an entity." See, also, *Crown Cork International Corporation*, 4 T.C. 19; aff'd., per curiam, 149 Fed. (2d) 968.

Petitioner attempts to distinguish *Higgins v. Smith* and *Crown Cork International Corporation*, supra, on the ground that in those cases no business purpose other than the saving of taxes was shown, while in this proceeding it claims that it has shown

another business purpose, namely, to satisfy the demands of the Comptroller of the Currency. However, the basis of the Smith and Crown Cork International Corporation cases was not that the transactions in question were designed to save taxes, but that they lacked substance and reality because of the continued control of the taxpayer over the property transferred through its domination and control of the wholly owned corporation which received the property. Indeed, both cases cite *Gregory v. Helvering*, *supra*, which is authority for the rule that an intent to save taxes is not to be condemned, and a taxpayer may resort to any legal means to accomplish that result. Moreover, petitioner has not shown that the Comptroller of the Currency required that the bank properties be sold. The only requirement of the Comptroller was that petitioner write down the value at which it carried the properties on its books by charging the excess of book value over fair market value to a surplus account. This was consistent with the general authority of the Comptroller contained in the National Bank Act, United States Code, Title 12, *passim*, and the decision of the Supreme Court in *Thomas v. Taylor*, 224 U. S. 73; cf. *Yates v. Jones National Bank*, 206 U. S. 158. The evidence shows that possible tax advantages were an important consideration in arriving at the complicated form in which the simple requirement of the Comptroller was met.

However, the ground for this decision is not whether or not the intent to effect a tax savings was the dominant purpose of petitioner. The basis for

the decision is the complete dominion and control which petitioner continued to exercise over the properties transferred through its complete domination and control of its wholly owned subsidiary. Petitioner makes no argument that such dominion and control did not exist. In light of the stipulated facts, it can not. Petitioner owned all the outstanding stock of Merchants, and the two corporations had interlocking officers and directors. Merchants had no independent business or economic life of its own. It had no salaried employees, and whatever work was necessary to the operation of its business was performed by employees of petitioner. The only business in which Merchants was engaged was the ownership of the property which it leased to petitioner. However, the lease agreements between petitioner and Merchants were not arms-length transactions such as would be entered into with a stranger. The rental formula between the parent and the subsidiary provided that Merchants would receive as rent from petitioner an amount equal to the total of all expenses and charges, including depreciation, allowable to Merchants as deductions from gross income for Federal income tax purposes, less any income derived by Merchants from any other incidental source. Thus, for Federal income tax purposes, Merchants could never show a profit or a loss.

In order for a taxable gain to be realized or a deductible loss to be sustained, property must in general be sold, abandoned, discarded, or otherwise disposed of. Just as the appreciation in value of

property without its disposition does not result in a taxable gain, similarly the mere shrinkage in value of property does not constitute a deductible loss. *Gulf Power Co.*, 10 T.C. 852; *C. F. Mueller Co.*, 40 B.T.A. 195; *White Star Line*, 20 B.T.A. 111. In effect, petitioner is claiming a loss upon the diminution in value of certain of its fixed assets. The fact that the write-down which reflected the shrinkage in value was accomplished through the medium of a "sale" to its wholly owned subsidiary, *MERCHANTS*, does not, under the doctrine of *Higgins v. Smith*, *supra*, effect a change in its essential nature from that of an accounting entry designed to account for the diminution in value of assets still controlled by petitioner. It makes no difference that the write-down was pursuant to a recommendation of the Comptroller of the Currency. See *Gulf Power Co.*, *supra*, with respect to accounting rules and orders of the Federal Power Commission; *Old Colony R. Co. v. Commissioner*, 284 U. S. 552, and *Gulf, Mobile & Northern R. Co. v. Commissioner*, 83 Fed. (2d) 788, with respect to accounting rules and orders of the Interstate Commerce Commission; and *National Airlines, Inc.*, 9 T.C. 159, with respect to accounting rules and orders of the Civil Aeronautics Board.

The facts clearly show that there is no substance to the sale of the branch banks by petitioner to its wholly owned subsidiary. Petitioner had complete domination and control over *MERCHANTS*, and the properties in the hands of *MERCHANTS* were as much subject to petitioner's control as they were while

legal title was in petitioner's own name. Higgins v. Smith, *supra*; Sidney M. Shoenberg, *supra*; Thal v. Commissioner, 142 Fed. (2d) 874; cf. Corliss v. Bowers, 281 U. S. 376. In effect and substance Merchants was no more than the alter ego of petitioner, and "no loss could occur upon a sale by a taxpayer to such an entity."

The respondent's determination is sustained.

Decision will be entered under Rule 50.

Served October 20, 1950.

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The Tax Court of the United States  
Washington

Docket No. 8993

BANK OF AMERICA NATIONAL TRUST AND  
SAVINGS ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DECISION

Pursuant to the determinations of the Court, as set forth in its Findings of Fact and Opinion promulgated on October 20, 1950, respondent has filed recomputation of petitioner's liability for taxes for the year 1943 under Rule 50, to which petitioner does not object. Accordingly, it is

Ordered and Decided: That for the year 1943

there are deficiencies in income tax and declared value excess profits tax in the amounts of \$942,337.38 and \$166,472.87, respectively, of which deficiencies in taxes payments were made by the payment after the mailing of the notice of deficiency of \$915,040.93 in income tax and \$161,650.70 in declared value excess profits tax, so that there are now net deficiencies in income tax and declared value excess profits tax in the amounts of \$27,296.45 and \$4,822.17, respectively.

[Seal]      /s/ MARION J. HARRON,  
                  Judge.

Entered Dec. 22, 1950.

Served Dec. 26, 1950.

In the United States Court of Appeals  
for the Ninth Circuit  
Docket No. 8993

BANK OF AMERICA NATIONAL TRUST AND  
SAVINGS ASSOCIATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION FOR REVIEW BY THE UNITED  
STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

Bank of America National Trust and Savings  
Association, a national banking association, by its  
attorneys hereby petitions this Honorable Court to  
review the decision of the Tax Court of the United  
States entered on December 22, 1950, finding a de-  
ficiency in income taxes and excess profits taxes  
aggregating \$32,118.62 for the calendar year 1943,  
and failing to find that the petitioner had overpaid  
its taxes for the said year. The said deficiency of  
\$32,118.62 determined by the Tax Court has been  
paid since the entry of the Tax Court's decision.

I.

Jurisdiction

Petitioner is a national banking association or-

ganized and existing under and by virtue of the laws of the United States of America and maintains its principal office in San Francisco, California.

The income tax return and the declared value excess profits tax return of petitioner for the year 1943 was filed with the Collector of Internal Revenue for the First District of California, San Francisco, California, all within the jurisdiction of the United States Court of Appeals for the Ninth Judicial Circuit.

The jurisdiction of this Court to review the decision of the Tax Court of the United States aforesaid, is founded on Sections 1141 and 1142 of the Internal Revenue Code.

## II.

### Prior Proceedings

On June 5, 1945, the Commissioner of Internal Revenue mailed a Notice of Deficiency in accordance with Section 272 of the Internal Revenue Code, proposing deficiencies in income and declared value excess profits taxes for the year ended December 31, 1943, as follows:

Income Tax .....	\$ 915,040.93
Declared Value Excess Profits Tax..	161,650.70
Total .....	\$1,076,691.63

Petitioner duly filed its petition for redetermination of said deficiency in the Tax Court of the United States within the time provided by law.

During the pendency of the proceeding before the Tax Court, the petitioner paid the aforesaid proposed deficiencies and sought refund thereof through the said Tax Court proceeding. A hearing before the Tax Court was held in the City of San Francisco, California, on November 7, 1949. The Tax Court promulgated its findings of fact and opinion on October 20, 1950, and in sustaining the Commissioner, the Tax Court determined deficiencies in excess of those proposed by the Commissioner of \$27,296.45 in income tax and \$4,822.17 in declared value excess profits tax, and the decision of the Tax Court to that effect was entered on December 22, 1950. Since the entry of that decision, these additional deficiencies have been paid by the petitioner and the petitioner is seeking a refund of tax overpayment in this proceeding.

### III.

#### Nature of the Controversy

The controversy herein involves the petitioner's correct income and declared value excess profits tax liability for the calendar year 1943, which in turn depends upon the determination of the following general issue:

1. Whether the petitioner is entitled to a deduction in 1943 for a loss sustained by it from the transfer of certain parcels of real estate in that year at a price below cost.

The Tax Court denied the loss on the ground that the sale of the property lacked substance and was

not a bona fide sale and therefore losses sustained therein could not be recognized as deductible losses for tax purposes. In view of the basis upon which the Tax Court rejected the petitioner's contentions, the issue might be considered to be narrowed to the question of whether the petitioner's sale of its property was a bona fide sale.

Prior to 1943 the United States Comptroller of the Currency had made a demand upon the Bank to reduce its surplus accounts by a write-down of certain parcels of its real estate, in which were located branch banks, from the value at which they were carried on the books of the Bank to their current market value. The Bank challenged the Comptroller's authority to compel such a write-down and also questioned the Comptroller's current market appraisal of the property. The Bank contended it had the legal right to carry the property at cost less reasonable depreciation.

In a settlement of the dispute, the Bank agreed that it would effect a charge-off or write-down of certain properties to an agreed market valuation provided it were permitted to do so in a manner consistent with its contentions. The Comptroller had no objection to this, so the Bank sold these parcels of property to Capital Company for cash at the appraised valuations. Capital Company then leased the properties to the Bank upon a rental basis yielding 6% per annum return to Capital Company on the price it paid for the property. Capital Company is a substantial real estate company all of whose stock is owned by Transamerica

Corporation, a holding company, who in 1943 with its subsidiaries owned about 25% of the outstanding capital stock of the Bank.

When this transfer of property was made to Capital Company, Capital Company agreed with the Bank that if the Bank wanted to repurchase the properties, Capital Company would sell the properties back to the Bank for the same price plus acquisition costs, which it had paid. The parties deliberately refrained from putting this agreement in writing.

Thirty days or so after the transfer of the property from the Bank to Capital Company, Merchants National Realty Corporation, a wholly owned subsidiary of the Bank, purchased the property from Capital Company for cash at the same price, plus acquisition costs, which Capital Company had paid for the properties.

The Bank claimed the difference between its cost of the property and the price which it had received from Capital Company as a deductible loss on its income tax return for 1943, submitting with the return an explanation of the transaction out of which the loss arose. Upon audit of the return the Commissioner of Internal Revenue disallowed the loss and the Tax Court sustained the Commissioner.

#### IV.

##### Assignment of Error

In making and rendering its decision as aforesaid, the Tax Court of the United States erred to

the prejudice of petitioner in the following respects:

1. In determining a deficiency in income and excess profits taxes for the calendar year 1943 and in failing to find that the petitioner overpaid its tax for said year.
2. In determining that the sale by petitioner of certain parcels of real estate to Capital Company lacked substance and reality and was not a bona fide sale.
3. In determining that the loss sustained by the Petitioner in the sale of said parcels of real estate to Capital Company was not deductible for tax purposes.
4. In determining that the sale by the petitioner of said real estate to Capital Company and the later sale of said real estate by Capital Company to Merchants National Realty Corporation, a wholly owned subsidiary of the petitioner, was not a transaction recognizable under the income tax laws to the extent that losses which were sustained therein could be allowed as deductions for tax purposes.

Wherefore, petitioner prays that the decision of the Tax Court of the United States be reviewed by the United States Court of Appeals for the Ninth Circuit and that a transcript of the record be prepared in accordance with the law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be

taken to the end that the errors complained of be reviewed and corrected by said Court.

/s/ GEORGE H. KOSTER,  
Attorney for Petitioner.

/s/ BAYLEY KOHLMEIER,  
Of Counsel.

State of California,  
City and County of San Francisco—ss.

George H. Koster, being first duly sworn, on his oath says that he is attorney of record for the petitioner named in the foregoing petition for review, and as such, is duly authorized to verify said petition; that he has read said petition and knows the contents thereof; and that the statements of facts therein are true.

/s/ GEORGE H. KOSTER,  
Attorney for Petitioner.

Subscribed and sworn to before me this 7th day of February, 1951.

[Seal] /s/ JOHN F. BURNS,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires April 12, 1953.

Received and Filed T.C.U.S. February 9, 1951.

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To: Honorable Charles Oliphant, Chief Counsel,  
Bureau of Internal Revenue, Washington, D. C.

You are hereby notified that on February 9, 1951,  
a Petition for Review by the United States Court of  
Appeals for the Ninth Circuit of the decision of the  
Tax Court of the United States heretofore rendered  
on December 22, 1950, in the above-entitled cause was  
filed with the Clerk of the Tax Court.

A copy of said petition so filed is attached hereto  
and served upon you.

/s/ GEORGE H. KOSTER,  
Attorney for Petitioner.

/s/ BAYLEY KOHLMEIER,  
Of Counsel.

Affidavit of Service by Mail attached.

Received and filed T.C.U.S. February 26, 1951.

[Title of U. S. Court of Appeals and Cause.]

### STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL

Comes now the petitioner above named, by its attorneys of record, and states that it intends to rely on appeal on all and each of the errors assigned in the Petition for Review herein, and Petitioner hereby formally adopts the errors assigned in the Petition for Review as its Statement of Points to Be Relied Upon on Appeal.

/s/ GEORGE H. KOSTER,  
Attorney for Petitioner.

/s/ BAYLEY KOHLMEIER,  
Of Counsel.

Affidavit of Service by Mail attached.

Received and filed T.C.U.S. February 26, 1951.

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[Title of U. S. Court of Appeals and Cause.]

### DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit, the entire record in the above-entitled proceeding, including the transcript of statement of counsel, the stipulation of facts together with exhibits attached thereto, and all other exhibits in-

troduced at the hearing of the case, in connection with the petition for review by the said Court of Appeals heretofore filed by the above-named petitioner.

Said transcript is to be prepared as required by law and the rules of the said Court of Appeals for the Ninth Circuit.

/s/ GEORGE H. KOSTER,  
Attorney for Petitioner.

/s/ BAYLEY KOHLMEIER,  
Of Counsel.

Affidavit of Service by Mail attached.

Received and filed T.C.U.S. February 26, 1951.

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[Title of Tax Court and Cause.]

#### CERTIFICATE

I, Victor S. Mersch, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 30, inclusive, constitute and are all of the original papers and proceedings, including Exhibits 1-A thru 22-V, on file in my office as called for by the Designation of Contents of Record on Appeal in the proceeding before the Tax Court of the United States entitled: "Bank of America National Trust and Savings Association, Petitioner, v. Commissioner of Internal Revenue, Respondent," Docket No. 8993, and in which the petitioner in the Tax Court proceeding has initiated an appeal as

above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 7th day of March, 1951.

[Seal]      /s/ VICTOR S. MERSCH,  
Clerk.

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[Endorsed]: No. 12881. United States Court of Appeals for the Ninth Circuit. Bank of America National Trust and Savings Association, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the Tax Court of the United States.

Filed March 19, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION AND ORDER FOR OMISSION  
OF CERTAIN EXHIBITS FROM PRINTED  
RECORD AND CONSIDERATION OF DU-  
PLICATE COPIES THEREOF

Whereas, petitioner has served and filed its Designation of Portion of Record to be Printed, and

Whereas, there has been no dispute with regard to the facts established by two of the exhibits now designated to be printed subject to this stipulation, as Exhibits 17-Q, 18-R and 19-S, part of Document 16 of the Transcript of the Record, and being the printed Annual Reports made by Transamerica Corporation for 1943 and by Bank of America National Trust and Savings Association for 1942 and 1943, to their respective stockholders, and

Whereas, it now appears that the cost of printing said afore-mentioned exhibits will be unduly high, and

Whereas, it is believed that neither the Court nor Counsel would be inconvenienced by the omission of said exhibits from the printed record,

Now Therefore, it is stipulated and agreed by and between the parties hereto, through their respective counsel of record, but subject to the approval of the Court, that the said exhibits hereinabove described may be omitted from the printed record and that said exhibits may be referred to and considered in the consideration of the issues presented by this Appeal, provided that Counsel for petitioner shall at the time

of filing the printed record furnish three copies of each of said exhibits to the Court and one copy thereof to counsel for the respondent.

Dated this 4th day of April, 1951.

/s/ GEORGE H. KOSTER,  
Attorney for Petitioner.

/s/ THERON L. CAUDLE,  
Assistant Attorney General,  
Attorneys for Respondent.

It is so ordered this 6th day of June, 1951.

/s/ WILLIAM HEALY,  
Judge of the Court of Appeals  
for the Ninth Circuit.

/s/ H. F. BONE,

/s/ WM. E. ORR,  
Circuit Judges.

[Endorsed]: Filed April 6, 1951.

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[Title of U. S. Court of Appeals and Cause.]

**STIPULATION AS TO DESIGNATION  
OF RECORD TO BE PRINTED**

Whereas, petitioner has filed its Statement of Points to be Relied Upon on Appeal and Designation of Portion of Record to be Printed and has requested therein that certain portions of the record certified to this Court be omitted from the printed record, and

Whereas, certain portions of the record designated by petitioner to be omitted from the printed record are portions of Exhibits not necessary to the consideration of the issues on this Appeal;

Now Therefore, It Is Stipulated by and between the parties hereto through their respective counsel of record that the following parts of the Transcript of the Record are not necessary to the consideration of the issues in this case.

1. All of document 2 of the Record being the original Petition to the Tax Court, except print Exhibit A of said Petition being the deficiency letter consisting of a one-page letter and a "Statement" of seven (7) pages.
2. All of document 3 being the Answer to the original Petition.
3. All of document 4 being a Request for designation of Place of Hearing.
4. All of document 5 being a Notice of Place of Hearing.
5. All of document 9 being a Motion for setting.
6. All of document 10 being a Notice of Hearing.
7. All of document 11 being subpoenas and applications for subpoena.
8. All of document 12 being Minutes of Tax Court proceedings.
9. (a) That part of document 16 consisting of Exhibits 17-Q, 18-R and 19-S which are to be

omitted pursuant to Stipulation filed concurrently with this designation, if the Stipulation is approved by the Court.

(b) All of that part of document 16 consisting of Exhibit 21-U, being the Bank of America N.T. & S.A income and excess profits tax returns on Forms 1120 and 1121, except print the following parts of the Form 1120:

Pages 1 and 4 of said Form 1120;

The schedule attached to said return headed, "Bank of America N.T. & S.A 1943 Schedules (Cont'd)" and containing schedule of "Other Earnings—Line 14," "Gain and Losses from Sale Non-capital Assets—Line 12(b), "Bad Debts—Line 20" and "Taxes—Line 22";

The schedule attached to said return headed, "Bank of America N.T. & S.A. 1943 Schedules (Cont'd)" and containing schedule of "Other Deductions—Line 29," and "Depreciation—Line 25";

The schedule attached to said return headed, "Explanatory Statement as to Losses Included in Losses Reported in Schedule D";

(c) All of that part of document 16 consisting of Exhibit 22-V being the Merchants National Realty Corporation income and excess profits tax returns on Forms 1120 and 1121, except print the following parts of said returns:

Pages 1 and 4 of said Form 1120;

Pages 1 and 2 of said Form 1121;

The schedule attached to the said return Form 1120 headed, "Merchants National Realty Corp.—1943 Schedules," and containing schedules of "Gains & Losses, Sale of Non-Capital Assets—Line 12-B," "Other Income—Line 14," "Taxes—Line 22," "Losses—Line 24," "Depreciation—Line 25," "Other Deductions—Line 29," Statement of Affiliation—Q-9, and Statement of Salary Adjustments—Q-11.

10. All of document 18 being the Brief for Petitioner.

11. All of document 19 being the Opening Brief for Respondent.

12. All of document 20 being the Petitioner's Reply Brief.

13. All of document 21 being the Reply Brief for Respondent.

14. All of document 23 being the Respondent's Computation for Entry of Decision.

15. All of document 24 being Notice Under Rule 50.

16. All of document 25 being Minutes of Tax Court proceedings.

It is further stipulated and agreed that if, in the course of preparation of their briefs or in the argument of this Appeal, either party finds it necessary or desirable to refer to any of the exhibits

omitted from the printed record, he may, with the permission and approval of the Court, refer to said exhibits in the original record.

It is further stipulated and agreed that this stipulation may be made a part of the Record and be included in the printed record.

Dated this 4th day of April, 1951.

/s/ GEORGE H. KOSTER,  
Attorney for Petitioner.

/s/ THERON L. CAUDLE,  
Asst. Attorney General,  
Attorneys for Respondent.

[Endorsed]: Filed April 6, 1951.

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[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED  
UPON ON APPEAL AND DESIGNATION  
OF PORTION OF RECORD TO BE  
PRINTED

Comes now the petitioner above named by its attorneys of record and states that it intends to rely on appeal on all and each of the errors assigned in the Petition for Review herein, which Petition for Review is included in the transcript herein, and petitioner formally adopts the errors assigned in said Petition for Review as its Statement of Points to be Relied upon on Appeal.

Petitioner further states that it believes that only the portions of the Transcript of the Record designated below to be printed, are necessary for the consideration of the errors assigned and relied upon by petitioner. Petitioner therefore requests that only the following portions of the said Transcript of the Record certified to this Court be printed:

1. Document 1 being Docket Entries.
2. Only that part of document 2, Original Petition to Tax Court, which consists of Exhibit "A" and "Statement" of seven (7) pages attached thereto.
3. Documents 6, 7 and 8 being Motion for Leave to File Amended Petition, Amended Petition, and Answer to Amended Petition.
4. Documents 13 and 14 consisting of Motion for Leave to File Amendment to Answer, and Amendment to Answer.
5. Document 15 being Stipulation of Facts with Exhibits 1-A through 6-F and 7-G through 16-P.
6. Only that part of document 16 consisting of Exhibits 17-Q through 22-V which is not herein-after designated as parts to be omitted.
7. All of document 17 being the Transcript of Hearing.
8. All of document 22 being Finding of Fact and Opinion.
9. All of document 26 being the Decision.

10. All of documents 27 to 30 being the Petition for Review, Notice of Filing Petition for Review, Statement of Points to be Relied Upon on Appeal, Designation of Contents of Record on Appeal.

11. Certificate and Seal of Tax Court Clerk.

12. Stipulation for Omission of Certain Exhibits from Printed Record and Consideration of Duplicate Copies Thereof, and Order of Court thereon.

13. Stipulation as to Designation of Record to be Printed.

14. This Statement of Points to be Relied Upon on Appeal and Designation of Points of the Record to be Printed.

Petitioner requests that the following portions of the Transcript of the Record be omitted from the printed record:

1. All of document 2 of the Record being the original Petition to the Tax Court except print Exhibit A of said Petition being the deficiency letter consisting of a one-page letter and a "Statement" of seven (7) pages.

2. All of document 3 being the Answer to the original Petition.

3. All of document 4 being a Request for Designation of Place of Hearing.

4. All of document 5 being a Notice of Place of Hearing.

5. All of document 9 being a Motion for Setting.
6. All of document 10 being a Notice of Hearing.
7. All of document 11 being subpoenas and applications for subpoena.
8. All of document 12 being Minutes of Tax Court proceeding.
9. (a) That part of document 16 consisting of Exhibits 17-Q, 18-R and 19-S which are to be omitted pursuant to Stipulation filed concurrently with this designation, if the Stipulation is approved by the Court.  
(b) All of that part of document 16 consisting of Exhibit 21-U, being the Bank of America N.T. & S.A. income and excess profits tax returns on Forms 1120 and 1121, except print the following parts of the return Form 1120:

Pages 1 and 4 of said Form 1120;

The schedule attached to said return headed, "Bank of America N.T. & S.A. 1943 Schedules (Cont'd)" and containing schedule of "Other Earnings—Line 14," "Gain and Losses from Sale Non-capital Assets—Line 12(b), Bad Debts—Line 20" and "Taxes—Line 22."

The schedule attached to said return headed "Bank of America N.T. & S.A 1943 schedules (Cont'd)" and containing schedule of "Other Deductions—Line 29," and "Depreciation—Line 25."

The schedule attached to said return headed,  
"Explanatory Statement as to Losses Included  
in Losses Reported in Schedule D."

(c) All of that part of document 16 consisting  
of Exhibit 22-V being the Merchants National  
Realty Corporation income and excess profits tax  
returns on Forms 1120 and 1121 except, print the  
following parts of said returns:

Pages 1 and 4 of said Form 1120;

Pages 1 and 2 of said Form 1121;

The schedule attached to the said return  
Form 1120 headed, "Merchants National Realty  
Corp.—1943 Schedules," and containing sched-  
ules of "Gains & Losses, Sale of Non-Capital  
Assets—Line 12-B," "Other Income—Line  
14," "Taxes—Line 22," "Losses—Line 24,"  
"Depreciation—Line 25," "Other Deductions  
—Line 29," Statement of Affiliation—Q-9, and  
"Statement of Salary Adjustments—Q-11."

10. All of document 18 being the Brief for Peti-  
tioner.

11. All of document 19 being the Opening Brief  
for Respondent.

12. All of document 20 being the Petitioner's  
Reply Brief.

13. All of document 21 being the Reply Brief  
for Respondent.

14. All of document 23 being the Respondent's Computation for Entry of Decision.

15. All of document 24 being Notice Under Rule 50.

16. All of document 25 being Minutes of Tax Court proceedings.

Dated this 4th day of April, 1951.

/s/ GEORGE H. KOSTER,  
Attorney for Petitioner.

/s/ THERON L. CAUDLE,  
Asst. Attorney General,  
Attorneys for Respondent.

[Endorsed]: Filed April 6, 1951.